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# CADWALLADER COLDEN

## A REPRESENTATIVE EIGHTEENTH CENTURY OFFICIAL

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# CADWALLADER COLDEN

## A REPRESENTATIVE EIGHTEENTH CENTURY OFFICIAL

BY

ALICE MAPELSDEN KEYS, PH.D.

*Submitted in partial fulfilment of the requirements for the Degree of Doctor of Philosophy in the Faculty of Political Science, Columbia University*

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# VITA

Alice Mapelsden Keys was prepared for college by the Classical School for Girls, New York City, and was graduated from Barnard in 1893, receiving the degree of B.A. from Columbia University. A year of post-graduate study resulted in the attainment of the degree of M.A. in 1897, that of Ph.D. having also been conferred by the University in the present year, 1906.

THE monograph which Miss Keys has prepared on Cadwallader Colden, and which is now published, is distinctly an original contribution to the history of New York in the eighteenth century. It has been written almost wholly from first-hand sources, and of those a large part still exist only in manuscript. It throws light on a period of history hitherto little studied and imperfectly understood. Its aim is neither wholly historical nor wholly biographical, but is rather a combination of the two. It is the study of a long official career considered as an illustration of the political and social system which then existed in one of the leading provinces of America.

HERBERT L. OSGOOD.

# PREFACE

It would be idle to affirm that patriotism depends on knowledge, or even on tradition; it would be equally idle to deny that a sense of kinship with a country's past, springing from at least a general familiarity with its development, and sustained by many visible reminders of its history, has much to do with the making of good citizens. Surely, in the face of much contrary evidence, England's storied cities have had a large share in forming the character of her people; while here in America, despite political corruption and social frivolity, Pennsylvania and Massachusetts stand for the ideas for which their fathers fought to an extent perhaps impossible were not the old houses and halls in which these men lived and spoke still so full of their spirit. It must therefore be regretted that New York has so few landmarks, and that, perhaps for this reason, so little is known of the men and women who made her history in the century that elapsed between Father Knickerbocker's nominal departure and the Revolution. Too cosmopolitan even then to produce a type, that fact in itself is a link with the present, and it was in the hope of suggesting that there are many more such links that this sketch of one of the predominant characters of this middle period was undertaken. So far as possible the four phases of his life here considered have been treated independently of each other, the detailed account of his work as surveyor-general, for instance, being quite unnecessary to an understanding of his career.

With the exception of the printed authorities mentioned in the text, the materials for these pages have been found in the manuscript collection known as the Colden Papers, and owned by the New York Historical Society. The courtesy of the society in permitting their use is hereby gratefully acknowledged, thanks being also due, in an especial manner, to Professor H. L. Osgood, of Columbia University, without whose invaluable suggestions and advice this study could not have been completed.

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# A COLONIAL SAVANT

# CADWALLADER COLDEN

## A COLONIAL SAVANT

A New York historian, in contrasting the early development of education in the New England colonies with its neglect in his own wealthier province, offers as evidence a list of the "Academics" living in the latter about the middle of the eighteenth century. Fifteen college men in a population of nearly a hundred thousand is not, it must be admitted, a large proportion.[1] But if it be remembered that New York had had a home college for only two years and that its men of wealth were, almost without exception, Huguenot merchants and Dutch traders, it will not seem surprising that they rushed their sons from the grammar school to the frontier, the counting house, or the West Indies, when, a century and a half later, their descendants are still debating the advantages of education in a mercantile career.

Nevertheless, the list as it stands is too short, for it omits the name of at least one university man, the vigor and breadth of whose intellectual life was nothing less than astonishing. This was Cadwallader Colden, long-time member of the council of New York, surveyor-general and lieutenant-governor. The son of a Scotch parson, he, too, had been destined by his family for the church, and with that end in view his father prepared

[1] William Smith's "History of the Late Province of New York," Vol. II, pp. 371 and 389–390.

him for college and entered him at the University of Edinburgh. At the time, nothing would have seemed more unlikely than that the solemn, hard-working boy should overturn this purpose. But once outside the manse, he developed extraordinary ambition, and the mere rudiments of science then taught at the University roused in him an enthusiasm that was to be lifelong.[1] Together they made the humdrum existence of a lowland minister seem intolerable. Moreover, he was convinced that his talents lay in another direction, and on his graduation in 1705 he went up to London to study medicine. And just as Edinburgh had won him to science, London won him to herself, and he felt that life would scarcely be worth the living could he not be a factor in her stirring progress. He shrank from mediocrity with his whole soul, and he felt powerless to resist it without the inspiration and opportunities of the wonderful town. By the time his studies were over, however, he had learned that success in London required money, and of that he had none. So when a sister of his mother's, a notable widow living in Philadelphia, wrote, suggesting that he set up his practice in that place, the possibilities of life in the New World offered such an attractive solution of his problem that before many months he was deep in the activities of the Quaker capital.

Here, finding that for a time patients were likely to be few, he became interested in trade, more than once going with his cargoes through the colonies to the south and among the islands in the Caribbean. But he was restless and unsettled, and his family had reason for their expectation that he would soon be among them again. And after five years of hard work he did go home, but only to return the next year, this time with a wife

[1] The authorities for Colden's early life are his copies of letters to Peter Collinson, May, 1742, and to Peter Kalm, 1750, as well as his correspondence in the New York Historical Society's Collection, 1711–1737.

and determined to be a colonist for good. His practice now claimed more and more of his attention, and when, in 1718, he journeyed up to New York for rest and recreation, he had every idea of being a Philadelphia doctor for the rest of his life. But when he called on the governor to pay his respects, the shrewd Scotchman then in the office marked him at once as a man of unusual ability. Again and again during his short stay he summoned him to the Fort, and a few months later wrote, inviting him to come to New York as master in chancery and surveyor-general.

Colden was taken completely by surprise, but he did not hesitate long. Colonial physicians made their fortunes slowly, and Colden had already more than once been forced to decide between more books and mere bread and clothes for his family. Moreover, the desire to serve his country had always been a part of his more personal ambition. On the other hand, he was becoming known as a scientist. When at home three years before, he had met Edmund Halley, the astronomer, who had shown much interest in his work, and he had also attracted the attention of the Royal Society, his paper on "Animal Secretion" having been read at one of its meetings. But he scarcely realized how many of his keenest pleasures would have to be sacrificed if he went to New York, while he saw the advantages of the move very clearly. He therefore accepted Governor Hunter's offer, and in the autumn of the same year entered the public service of the colony, in which service he was to die fifty-eight years later. During much of this time he was deep in factional politics, sometimes, as the silent spokesman of his party, writing his chief's letters, messages, speeches; sometimes the chief himself; yet for many years spending six months of the twelve in the open, and producing an almost continuous succession of letters and memorials on a hundred timely topics.

Under these circumstances, his scientific and literary attainments, however deficient in permanent results, must be considered remarkable. Indeed, his tastes and activities were so varied, he came in contact with so many men of so many minds, that his opportunities for influence were unusual, and he might have been more powerful than the governor himself. Yet, for some reason, he just missed greatness in each special line of effort and as a whole. Given a more commanding physique, greater charm of manner, a more buoyant temperament, and contemporary applause at least might have been won. But, as it was, an insignificant presence, an oftentimes petty sensitiveness, and a formality of demeanour that rarely unbent save to his wife, prevented his turning a unique position to the best account. Yet his admirable qualities of mind and heart brought him the devotion of his official servants and the affectionate reverence of his family, while his friends believed in him and worked for him to the end, despite the discomfort he often caused them by his moodiness and caprice.

Arrived in New York, Colden's new occupations at first proved so absorbing that all real scientific work was for the time laid aside; but his trained powers of observation and accuracy of statement found plenty of exercise in the presentation of the plans for colonial expansion formed by the governor who had succeeded his first patron. Moreover, this enlightened official promised him a small salary for compiling a catalogue of the plants and animals of New York. The necessary investigation could have been made on his surveys, but Horace Walpole, the auditor-general, chose that moment to demand his arrears, which put an end to all unnecessary expenditures. So Colden turned his scanty leisure to other uses, and in 1727 the first part of the work to which, perhaps, he has chiefly owed his literary reputation, was published in New York by William Bradford.

This was his "History of the Five Indian Nations." [1] The work of his office had thrown him much among this people, especially the Mohawks. Sometimes he had been weeks and even months alone with them in the wilderness of central New York; he had been treated by them as a brother, being regularly adopted into the Mohawk tribe, and of their loyalty and honour he was convinced. He believed that they could become self-supporting in a less precarious way, and had interested himself in their knowledge of form and colour. Indeed, his inability to keep a skilled interpreter had alone prevented him from spending still more time in their study and in forming plans for their development. But his history is not enlivened by this intimate knowledge. Based confessedly on the French narratives of De la Potherie and La Hontan, it is a dry and not always consecutive and clear account of the wars and treaties of the Five Nations from the earliest times to the close of the seventeenth century. He fails, or rather does not even attempt, to humanize his subject, and in his introduction, alone, indicates its practical importance. Yet, limited in scope as the book was, it still remains one of the authorities for the history of the Iroquois, and at the time had an instant success. The edition of five hundred copies was quickly disposed of, and its readers were not confined to the colonies. The eighteenth century was distinctly the age of the *dilettanti*. Anything, provided it was "curious," was eagerly welcomed. Hence, the first English account of a race whose fortunes were bound up with those of the leading colonizing nations of the time was read less on account of its merits than of its novelty. But he who read could not but learn something of names and places. And knowledge of the American situation was desirable for Englishmen in those days, when the outbreak of war with France

[1] "The History Of The Five Indian Nations Depending On The Province of New York," by Cadwallader Colden. New York, 1727.

was to see them under the leadership of a prime minister, who, it was said, heard with amazement that Cape Breton, the strategic point of the contest, was an island, running off to tell the king the "good news."[1]

About the year 1729, Colden, influenced by an uncongenial political environment and by the expense and difficulty of bringing up his family in town, decided to live on the estate which had been granted him along the line between Ulster and Orange counties. He had called his manor, where he had already built himself a manor-house, Coldengham, and there for the next twenty years he spent his happiest moments. To his mind a man could justify his existence only by accomplishing something for the advancement of knowledge or the improvement of the world as a place to live in. So, when disheartened by failure in science and politics, he used to remind himself that he had claimed a little corner of the universe from the forest, the bears, and the wolves. Intelligent care, in fact, did more, and before many years his delighted eyes saw his acres so transformed that they brought to mind the lovely country-seats of southern Scotland and England. Often he was forced to be away from this charming spot nine months in a year, and at the best of times he was frequently absent. But when at home, his wife, who was his comrade as well, his children, his soils and his planting, his books, and, above all, his "speculations," as he called his scientific experiments, left him with but one desire ungratified.

This was his natural longing for some one with whom to compare notes, some fellow-investigator with like difficulties and enthusiasms. For some years he had corresponded with his wife's cousin, James Logan, the Pennsylvania official and naturalist. But Logan had snubbed Colden's tendency to pry into matters of pure conjecture, and the peace was with difficulty

[1] Macaulay's Essay on Horace Walpole.

kept between them; the spirited comparison of cases which had at one time passed between himself and certain other physicians had been gradually pushed aside by other business and lack of fresh experience on his part; and his friend and fellow-councillor, James Alexander, was forced to fill his sheets with a running description of the political situation. There remained a friend of his youth, a Boston physician, Dr. William Douglass. With the range of their topics limited only by the universe, he and Colden had first talked and then written with little thought of economy until the removal to Coldengham. Thence, however, to Boston, the distance was great and postage expensive, so letters became few. But Colden never had a want without attempting to satisfy it. He suggested to Douglass the formation of a literary and scientific society with headquarters at Boston, each member of which was to contribute a paper once in six months, to be criticised by the Boston members, corrected, and then printed. And in 1736 the first publication of a society on these lines, but composed wholly of medical men, was issued at Boston,[1] while in 1743 a far more important result of his eagerness for intellectual sympathy appeared in Philadelphia. This was the American Philosophical Society, whose annual discussions have been maintained continuously from that day to the present, the suggestion that this society should be formed being generously credited to Colden, by its organizer and leader, Benjamin Franklin.[2]

Meanwhile, however, Colden had gained a correspondent who satisfied his every requirement, and became indeed, not only his friend but his banker, political agent, business manager, critic, and inspiration. This fortunate acquisition was Peter

[1] Letter from William Douglass, 17th February, 1736.

[2] This claim is made in a "Biographical Sketch of Cadwallader Colden," in The American Medical and Philosophical Register, 1811, Vol. I, pp. 297–303. The letters, however, do not sustain it, Franklin merely thanking Colden for the suggestion of some philosophical publication. His letter was written November 28, 1745.

Collinson, a wealthy London merchant. A naturalist himself, with a beautiful garden near London full of rare vegetables and fruits, and numbering among his correspondents scientists in every country in Europe, he yet was simplicity and enthusiasm personified. With ingenuous fervor, he thanks Providence for letting him live to see the pair of moose horns sent from America to the Duke of Richmond; he throws himself with impartiality into the affairs of the earth, the air, and the water; and over the first experiments in electricity, the newly discovered power that could lay a "lusty" Irish bishop on the ground, he is fairly beside himself.

Gradually, moreover, other men of like tastes came into his life, each stirring his ambition by the incentive of a hearty admiration. Among these was John Bartram, the owner of the first botanical garden in America, at Kingsessing, near Philadelphia. A simple Quaker farmer, a chance glance at a daisy in a furrow had so stirred him that the next morning he walked into Philadelphia, went directly to a book shop and asked for a book which could tell him about flowers and leaves. And slowly he had mastered the science of botany, learning languages by the way, until he had become the valued agent and correspondent of English noblemen and continental savants, for whom he made observations and collected specimens. Exploring the Appalachian slope from Connecticut to the Carolinas, in all weathers, at all times of the year, acquiring an influence with the Indians that his province was quick to employ, sometimes ill from exposure, yet always eager and cheerful, he was at the same time a practical and successful farmer, retaining the leadership of his family and servants in fine patriarchal fashion. Simple and single minded, it was hard to be anything else in that serene presence, and there Colden could always forget the difficulties that continually beset him.[1]

[1] "Letters from an American Farmer," by J. Hestor St. John. Philadelphia, 1793. Letter XI, p. 189.

A friend of a different sort was John Rutherford, a young Scotchman who had come over to command the regulars at Albany. Rutherford belonged to one of the county families who had been admirers of Colden's father, and despite his youth had served seven years in Parliament. Of a distinctly social nature, a man of affairs and action, he, too, was a student of the same eager type, and, though separated from friends and family, could find the idleness of a long Albany winter, "perfectly agreable" when spent in the company of mathematics, philosophy, and politics.

Then there was Linnæus, the great Swedish botanist; his pupil Gronovius; Peter Kalm, who had been sent to America on a tour of investigation by the Royal Academy of Stockholm; Samuel Johnson, who was to be the first president of King's College; and, above all, Benjamin Franklin. He and Colden had fallen in with each other one day on a journey; riding awhile in company, Colden had suggested a correspondence, and a long series of letters resulted. In these Franklin is delightful. Perfectly open about his own experiments, confiding the first suggestions of some of his most noted discoveries, it is in Colden's that he seems most interested, and no hint of superiority ever escapes him. Always sympathetic, ready to give public expression to his confidence and admiration, quick to offer practical assistance as printer and publisher, his friendship was no mere sentiment, and was as helpful as it was charming.

Besides these new friends, moreover, James Alexander, relieved involuntarily from public business, was devoting his increased leisure to scientific research. Under no illusions as to his own powers, he was content to experiment in well-trodden fields, but he believed that Colden could do more and vigorously prodded him on, while saving him from annoying details and doing for him in America what Collinson was doing in England. In return, Colden dedicated to him in terms of

unusual warmth a little volume which he hoped would transmit the names of them both to posterity. The regard of posterity, indeed, was a subject of which Colden and his two closest friends thought entirely too much, and there is something absurd as well as touching in their efforts to make sure of recognition by that impartial judge. And had "An Explanation of the First Causes of Action in Matter, And of the Cause of Gravitation"[1] measured up to its title such recognition would doubtless have been won. But no definite conclusions have ever been accepted by science concerning the problems whose solution Colden offers with these confident words: "Though I may not pretend to have acquired a perfect and adequate conception of what I treat, or that I have fallen upon the best Method of conveying to others the Conception which I have formed myself, on this Subject; the Force of the Evidence on my Mind is as strong as that of Day Light after the Sun is up in cloudy weather."

Newton had written to Bentley that he wished it expressly understood that he made no pretensions to a knowledge of the workings of the law of gravitation. He only knew that it was absurd to suppose that one body could act on another save by mediate or immediate contact, but the medium might be either material or immaterial, and he had no theories about it whatever. This medium Colden now assumed to have discovered, and his line of argument was somewhat as follows: Matter, recognizable by its essential qualities, extension, and impenetrability, is, he demonstrates, divided into three classes, each of which is the agent of an exclusive force, motion, resistance, and reaction respectively. The characteristic example of the third species is ether, a continuous material substance, and the result of its contact with bodies of resisting and moving matter

[1] Or, "The Principles of Action in Matter." New York, 1745: London, 1746, 8vo, pp. 75.

is gravitation. This interaction is worked out mathematically and so clearly that, as Maria Edgeworth says of Cuvier's "Theory of the Earth," "it is intelligible to the meanest capacity." But that moving matter is inherently different from resisting matter, because motion and the power of resistance, of which they are respectively the agents, are impenetrable to each other, and that moving matter moves of itself, and not by the action of some external force, is so contrary to knowledge and experience that the following demonstration, if interesting, is not convincing. Moreover, setting aside the proof, whose faultiness Colden had feared might obscure the truth of his conception, and considering the theorem itself, the discovery from which he hoped so much, it must be admitted, was not a discovery at all, but had already been exploited toward the close of the preceding century by James Bernouilli, of the famous Basel family. That Colden was conscious of this is, however, inconceivable. So it must be concluded either that he had never read Bernouilli's treatise, or that having read it when young, its ideas had lain dormant in his mind until, becoming active, he had mistaken them for his own.

At any rate, the fact made little impression on Colden's friends. When James Logan, for instance, told Franklin of Bernouilli's treatise, Franklin was quite satisfied when he added his belief that Colden had never seen it,[1] and when some foreign mathematician said unpleasant things about plagiarism, Collinson ascribed it to a defective understanding,[2] and Franklin to envy.[3] Still, even Franklin and Collinson were obliged to confess that those of their friends who had read it found it obscure and even unintelligible, and though Franklin was sure that this was due to insufficient knowledge on their part, he could but

[1] Letter from Franklin, October 16, 1746.
[2] Letter from Collinson, August 3, 1747.
[3] Letter from Franklin, January, 1747/8.

add that he was having much difficulty with it himself. But the main thing was to get people to read it at all. It was a bad time for abstract philosophy. England, whose book trade has always been peculiarly sensitive to public events, was engaged in war with France, and her colonies were helping her as they had never helped before. Indeed, Colden had sent his first copies to Collinson with an apology for being absorbed in philosophy when all the world could think of nothing but the blow that was preparing against New France.

But though many Englishmen said they were too busy to read Colden's thesis and others that they could not understand it, the Prince of Wales's bookseller was sufficiently impressed with its possibilities to set up, without Colden's consent or even knowledge, an edition of his own. So when Colden's second packet arrived a year later, Collinson found England so well supplied that he was obliged to seek a market on the continent.[1] Here, the Germans found the last nine pages absolutely incomprehensible, but for the sake of the first thirty-four an edition was printed at Leipsic and Hamburg in 1748, accompanied by a commentary. Of this Colden could not read a word but the proper names, which, however, was sufficiently delightful, because he saw his own in the glorious company of those of Wolpius, Newton, and Leibnitz.[2] Indeed, the actual translation made by a neighbouring Dutch pastor was disappointing, for by this it appeared that the editors had emphasized the metaphysical side of the principles, of which Colden had said nothing,[3] while the same point of view was taken by the author of "Liris Theologia Metaphysia," which, with Colden's name among others on the title-page, was published in London about this time.[4]

[1] Letter from Collinson, March 27, 1746/7.
[2] Colden's copy of a letter to Franklin, May 20, 1752.
[3] *Ibid.*, October 24, 1752.
[4] Colden's copy of a letter to Collinson, July 7, 1749.

The attention he attracted abroad, moreover, reacted on his reputation at home. Franklin reported a revival of studious habits in Philadelphia, preparatory to a more intelligent reading of his "Explanation," and Logan acknowledged that he had been hasty in his first judgments. Yet when Dr. Betts, an Oxford don, wrote to Alexander in 1749 to know when Colden was going to keep the promise made in the introduction to the "Principles," [1] and show their application, Colden told him that his was the first word of recognition that had reached him from England. But he had not waited for this. In 1751 a revised edition of the "Principles," with "The Motion of the Planets explained from these," to which was appended a discussion of fluxions, was published in London by Dodsley. Newton had died before explaining certain apparent inconsistencies between *his* "Principles" and the motion of the planets. That they were only apparent has since been proved. But in Colden's time this had not been done, and Colden hoped, instead, satisfactorily to explain planetary motion by his own theory. As he says to Dr. Betts: "What I am next going to tell you I am very sensible with what danger I say it viz. That Sir Isaac Newton's theory of the planet's motion is not perfect." But this statement seems almost fatuous when he goes on to say that in a hundred other instances where he had thought Newton wrong, he had found it his own misapprehension.

The new edition was launched with considerable éclat. Dodsley had cheerfully accepted Colden's terms, all the magazines published extracts and summaries in successive numbers, and Franklin prophesied that it would "make a great noise." But its implied disloyalty to the great Newton hurt its popularity from the start. Dodsley's cheerfulness was soon as diminished as were his anticipated profits, and when Leonard Euler, the great Swiss mathematician, mercilessly pulled the

[1] The "Explanation," etc., was also spoken of briefly as the "Principles."

book to pieces and Colden replied to his attack with some bitterness, he refused to print their respective papers. Even Collinson begged his friend to eliminate the objectionable sections; and Colden made the attempt, only to be surer than before of the truth which they contained. Moreover, Franklin had taken the edge from Euler's sharpness by tracing it to Old World prejudice, to the evident reluctance of Europeans to admit the possibility of learning anything from "us Americans."[1] He had himself shortly before affirmed the identity of lightning and electricity, and suggested at the same time the means of protection from its shocks. This seeming profane to a Göttingen professor named Kastner, he had, in a manner "unworthy of a philosopher," berated him for presuming to check "the thunder of heaven." But he might have saved himself the trouble, for Franklin's latest experiments had proved that the earth is electrified positively and the clouds negatively, so that it was the thunder of earth, not of heaven, against which he had offered safeguards. Of this discovery Colden was the first to be told, in the thought that it might be of use to him as well as a mark of esteem, not to speak of Franklin's own desire to share his little joke on Kastner with one he could trust. For, as he said in his next letter, "'tis well we are not, as poor Galileo was, subject to the Inquisition for philosophical Heresy. My whispers against the orthodox doctrine in private Letters, would be dangerous, your writing and printing would be highly criminal. As it is, you must expect some censure but one Heretic will surely excuse another."[2]

Still, though Franklin valued his own interleaved copy of the "Principles" so highly that he would not lend it to so careful a friend as James Bowdoin, he was so far from believing in Colden's theories himself that he could not, with the rest of the

[1] Letter from Franklin, April 12, 1752.
[2] *Ibid.*, April 23, 1752.

world, acknowledge a "*vis inertia*" in matter. In fact, Colden had gained no valuable adherents anywhere. His nephew, it is true, had sent him two recent philosophies with the assurance that their authors would alter them according to his suggestions, and Mr. Samuel Pike, of Hoxton, wrote that his "Philosophia Sacra" had been inspired by the "Principles." But such was his enthusiasm that even Colden suspected he was somewhat of "a wag," and though the arrival of a copy of Mr. Pike's creation dispelled this suspicion, it left his vanity untouched.

Still not disheartened, he now revised and enlarged his "Principles" once more, adding on this foundation discussions of the phenomena of light, of the elasticity of the air, of the cohesion of the parts of water, and of electricity. This last subject was treated by his son David, who had already won Franklin's commendation by his refutation of the theories of the Abbé Nollet. When his manuscript was completed, however, Colden did not seek a publisher, but submitted it to the approval of Dr. Bevis, of London. Years went by; Colden became in turn president of the council, acting head of the government, and lieutenant-governor; he moved his residence from the Ulster manor-house to a Flushing country-seat; and still the oracle had vouchsafed no answer. Colden could but think his papers despised, though he found it no easier to despise them himself, and was still certain they would stand "the strictest test." But his new position had shattered his almost realized dream of "*otium cum dignitate*," his "amusing speculations" were at an end, and he was "obliged to be perpetually in company." Moreover, he was getting to be an old man, and he wanted to leave his *magnum opus* in more considerate hands. Hence, on February 25, 1762, he wrote to Robert Whyte, Professor of Medicine at the University of Edinburgh, that Collinson would send the papers to him on his indicating

a willingness to read them.[1] "National Predjudices," he writes, "as well as personal often prevail in many points of philosophy. Perhaps the Principles which I have adopted may be more favourably received in Scotland than in England. You'll pardon the fondness which a man naturally has for his own productions when I desire of you, in case you do not think these papers proper to appear in public, please to deposit them in the library of the University of Edinburgh where I had my Education in the Rudiments of Science, for I am persuaded they will sometime or other be found to contain the true principles of physical knowledge, and to be of real use.

"We have no knowledge of substances or of things themselves, as little knowledge of material substances as of the Intelligent or of Spirit. All our knowledge consists in this that from the effects of phenomena we discover something which we call substances have the power of producing certain effects. How they produce these effects we in no manner conceive. Yet all the objections to my principles which I have seen arise from an expectation that I should explain in what manner the primary powers produce their effect."

Of the fate of the papers, beyond the fact that Dr. Whyte advised against their immediate publication with such tact as to leave Colden's vanity unwounded, nothing is known. Their truth has probably never since been tested, and whether they are mouldering in a dusty corner of the library or were long since destroyed in some energetic cleaning, probably no one will ever take the trouble to find out. But the old edition long continued to be read, and when Buffon lost his copy in 1788, he sent to Thomas Jefferson for another, who, though obliged in turn to call on Francis Hopkinson for assistance, succeeded in gratifying his request.

But Colden was not a man of one idea even in physics. Of

[1] The Colden Letter Books, Vol. I.

this proof may be found in his pamphlets, "On the Properties of Light," "An Inquiry into the Causes of Vital Motion," "The Causes of Metal Medley swimming in Water," and in his "Letter to Lord Macklesfield." Indeed, he was so interested in his "Inquiry," that at seventy-seven, too busy to correct the whole treatise, he wrote a summary thereof to Whyte in order that some one might carry on the idea after his death. Unquenchably ambitious, it was well that an equally enduring hopefulness kept his old age unembittered by want of success where success was most desired.

The reception of his philosophical theories, moreover, had not been his only disappointment. As surveyor-general he had been early impressed with the ignorance of his race as to the geography of its American possessions. While France had supplied her colonial officials with instruments of the latest construction for the observations necessary to map-making, England had stood passively by, and then accepted the results. How shamefully doctored these were, Colden had himself shown, but he had little hope of awakening the British government, and instead bent his energies to the construction of simpler and more portable instruments, cheap enough to be bought by the colonists themselves. But he failed repeatedly. After consultation with Alexander, who was experimenting to the same end, he would send his invention to Collinson for submission to experts, only to hear that his idea had been proved defective a hundred years before, or that he had overlooked some obvious difficulty.

Again, having experienced the author's difficulty of forcasting the demand for his works, he sought a remedy in a new method of printing. He proposed, instead of the ordinary movable types, the use of metal sheets, resembling pages of type, or, in other words, an inverted leaden facsimile of the book to be printed. This, he acknowledged, would make the first expense heavy, but the first would be approximately the only

outlay, as successive imprints would be at a nominal cost, as in engraving. By this method additions and corrections could be easily made, the supply would conform exactly to the demand, and in the case of an unsuccessful book, there would be no loss in paper and the metal could be used again. Moreover, the number of unsuccessful books would be reduced and authorship would not be lightly assumed. As in the matter of the quadrants just referred to, however, he had no such confidence in his scheme as the "Principles" had inspired. He was not sure that it was practicable, and after a doubtful letter from Franklin, to whom he had sent it, he seems to have made no further attempt to exploit it. But his method was entirely practicable, for it was what is now known as stereotyping, the invention of which is credited to William Ged, an Edinburgh printer, though the honour has been claimed for a Dutchman named Von der Rey and others. Ged discovered the process about 1725, ten years after Colden finally left Scotland, but he did not apply it with success until 1739, about four years before Colden sent his scheme to Franklin. Whether Colden had ever heard of Ged or Von der Rey it is impossible to say. Years after his death, however, his scheme was printed in an American scientific magazine, and the editors state it to be the current opinion that stereotyping was invented by a Mr. Herhan, who was at that time practising it in Paris under letters patent from Napoleon. Moreover, they add that it is their belief that Herhan had made use of Colden's own idea, having found it among the papers of his old employer, to whom Franklin had probably communicated it.[1] But Colden's share in the matter apparently has not survived the shock of investigation, or

[1] American Medical and Philosophical Register, 1811, pp. 439–450. "Original paper on a new method of printing discovered by him (Cadwallader Colden) with an original letter from Dr. Franklin and some accounts of stereotyping as now practised in Europe, etc. by the editors."

rather, Herhan has himself been forgotten. So, once again, Colden was either his own dupe, mistaking another's inspiration for his own, or the unfortunate man last to pick up a sporadic idea.

About this time, however, he achieved a real success. Always interested in botany, he had felt himself too ignorant for effective work until, nearly thirty years after his removal to the colonies, he fell in with a volume of Linnæus. Charmed with his method, he grasped it with such ease that he was soon able to send over the sea the flora to which he had access, analyzed and classified according to its principles. The Swedish botanist was astonished and delighted at such quickness of apprehension, and a pleasant exchange of books and letters ensued. But there were other things more pleasant still. Thus, "Acta Upsalensia" for 1743 contains: "Plantæ Coldenghamiæ in Provincia Novo Eboraceni spontanæ crescentes quæ ad me methodum Linnæi sexulem observavit Cadwallader Colden";[1] Linnæus named a newly discovered genus of plants Coldenia;[2] Colden's acquaintance was sought by well-known botanists; and the inevitable request for the story of his life, for publication in a "Biographica Botanicorum," arrived promptly.[3]

About this time, also, Colden spent a winter's leisure in revising his Indian history, writing a new introduction and putting in order material which he had collected years before, bringing it down to the peace of Ryswick. He had taken up this work unexpectedly to himself and at the urgent request of Collinson, who assured him that the London publishers would be only too glad to get hold of it. But Collinson was too sanguine, and the manuscript remained in his possession five

[1] From Joh. Fred. Gronovius, August 6, 1744.

[2] Letter from Franklin, October 16, 1746; letter from Collinson, November 5, 1747.

[3] From Peter Kalm, January 4, 1750.

years before he found a publisher who was ready to make satisfactory terms. Indeed, he managed the whole thing with indifferent success, for being out of town when the edition at length went to the printer, he failed to prevent the insertion of the charters of Pennsylvania, and the substitution of a dedication to Oglethorpe, besides many minor changes. Colden was disgusted, though not at Collinson, while Thomas Osborne the publisher, soon had his own complaints. For, although the value of the edition was enhanced by the text of numerous Indian treaties, and by the addition of Colden's famous pamphlet on the fur trade, it proved a disappointment to him also. Pronounced by Franklin to be a "well-wrote, entertaining and instructive piece," and "received in the world with great reputation," [1] the demand for it dropped suddenly and soon. Osborne was obliged almost to give it away, vowing the while that he would never again publish save for ready money; and when Colden asked what encouragement he could give him to continue his narrative, he replied that he could give him none whatever. His frankness proved crushing to Colden's revived interest, and he never again made a formal contribution to history. Some years later, however, on reading William Smith's newly published history, he became so exasperated, his prejudices, personal and political, were so outraged, that he determined to provide the historian of the future with a critical guide to its pages. And this he did in a series of letters to his son, written at Coldengham in the winter of 1759–60. Their discussion, however, belongs more properly to the consideration of his political career.

Naturally enough, Colden was much interested in education, and his views on the subject are surprisingly progressive. Narrow and inflexible though he was in his political convictions, in social, intellectual, and, to a certain extent, in religious

[1] From Franklin, January 27, 1747.

matters, his ability to see the other side of the question was considerable. He could, to be sure, see no virtue under what seemed to him the self-complacency of those spiritual radicals, the Independents, as he heard, on the one hand, their lofty pretensions, and saw, on the other, the mortal errors of their lives. But seekers after truth of all shades of belief had the sympathy of this Scotch dominie's son, while a strongly developed sense of proportion kept him from provincialism in his habits of thought and life. His aunt, indeed, regarded his adaptability with horror, and spoke her mind with Quaker bluntness, whereupon Colden explained his position in a letter so characteristic of his most attractive side that it is here given in full.

"MADAM:

"I came from home last Friday morning and left my wife and children in the country and in good health and found Sandy and Betty in good health in this place. My wife wrote to you from the Country but we have not heard from you since you wrote to me when I was last in this place. I was extremely concerned to find that you was not pleased with our sending the children to town. We had no design beside giving them some Education that they cannot have in the country and to rub off some of the country awkwardness which is a great disadvantage to young people that expect some time to be in Company and our sending them to the dancing school was only in compliance with the customs of the Country which we cannot bring to our own humours and with which we must comply if we live in the Country where such manners are used. They are both now of those years as they must be in Company unless they were to be moaped up in the woods and give up all hopes of advancing themselves in the world. I never had the least thoughts of making a priest of Sandy but his learning Latin with the minister last winter will be of use if he apply himself

either to Law or Physick and, indeed, in almost all affairs or Business of life . . . It gives us a great deal of concern that we can be of no use to you under the infirmities of old age by reason of our distance from you. I thought that it would have given you some satisfaction to have seen me and Sandy and for that reason I was resolv'd to have carried him with me this fall to pay our Duty to you but you have forbid it in such a manner that I shall not attempt it without your leave. I hope none of us have done anything to disoblige you. It would give me the greatest grief if you entertained the least thought of any want of Duty especially if you should think so of me for you must at the same time think me the most ungrateful man to the kindest relation. I must again beg of you to write to me that I may not have any reason to suspect that your love to me is lessened for I really cannot bear the thoughts of its. Sandy and Betty pray that you will accept of their Duty to you. All my friends give me a good account of their Behaviour and Betty is taken much notice of by the best families in the town.

"I am Madam Yr. most dutiful nephew

"CADWALLADER COLDEN.

"New York, October 23rd, 1734."

It seems to be a matter of general belief that the double function of education, on the one hand to fit man for service as citizen and as patriot, and on the other to increase his own power of enjoyment has been but lately perceived, and that our forefathers founded universities for the purpose of turning out mere scholars or polishing off the man of leisure. But the modern creed is professed in so many words, in a letter of Colden's acknowledging the receipt of the prospectus of the new University of Pennsylvania. Moreover, after congratulating its promoters for including an agricultural department in their scheme, he proceeds to give some interesting suggestions. It was his

opinion that the beauty and strength of the English tongue should be particularly emphasized by instructors, and that no other language should be required for entrance, but that Latin and Greek should be included in the courses of law, theology, and science, while prospective merchants should study French. But he wrote chiefly to urge the necessity of symmetrical development. Knowledge was good, yet to be effective it must be fortified by character, ease of manner, dignity of bearing. Therefore, professors and masters should be chosen with reference to their hearts as well as their heads, the importance of dancing, oratory, and theatricals should be realized, and — antique touch — due attention should be given to precedence.[1]

Colden, moreover, had his theories on the education of younger people, and when gay Betty Colden had married Peter Delancey and become a thoughtful matron, oppressed by anxiety for the present and eternal welfare of a lot of lively children, it was to her father that she turned for guidance. "The Economy of Human Life" and "Dialogues on Education," though she bought and studied them when advised to, could not satisfy her as did the suggestions of his experience. These she struggled to carry out literally, and when it proved impossible to send the boys away from home, she set herself to accomplish the alternative, the maintenance of a serene mind and the transformation of their lessons from drudgery into pleasure. And she undertook this, though she remembered that the combined efforts of their father, their tutor, and herself had been required to make her sons study at all, and feared that the introduction of pleasure into the equation would eliminate the little application that was theirs.[2]

According to his lights, also, Colden had concern for the

[1] Written about November 16, 1749.

[2] Colden's copy of a letter to Elizabeth Delancey, June 17, 1752; Elizabeth Delancey to her father, August 14, 1753; *ibid.*, February 20, 1754.

higher education of women. When urging Collinson at one time to catalogue the flora of Great Britain, he suggests the use of the English language, one of his reasons being that the book would thus be thrown open to women, who, he thinks, are especially adapted to the study of botany because of their curiosity, quickness, and accuracy. On another occasion, when sending for certain books on the same science, and containing colored plates, to be given to his daughter Jane, he says that botany seems to him so preferable to the usual feminine pastimes that he wants his daughter's interest encouraged in every possible way. Therefore, as she cannot have botanical gardens, she must have the next best thing. But it is only necessary to consider the confidence he reposed in the sense and judgment of his wife, whose political knowledge he made equal to his own, to know that he had a dormant belief in the capacity of woman to do what she would, which only needed to be developed by circumstances.

Particularly interesting is Colden's endeavour to use his own knowledge for general public enlightenment. In one way or another he was always doing this, but a notable instance occurred during the fever epidemic of 1741–42. Colden and others felt that the filthy condition of the slips, the existence of tar pits within the city limits, and the fact that the cellars of many houses were filled with water, while many other houses had no cellars at all, had had much to do with the outbreak, and Colden, at least, determined to do something about it. So he published an article in which he showed by certain historical examples that epidemics always sprang from, or were nurtured by, the very sanitary conditions which then surrounded the inhabitants of the city. But he felt that their general improvement could not be brought about by an appeal to the public spirit, personal pride, and self-interest of the individual citizens, and urged the corporation to take up the matter, to put the city in order, and

promise to pay damages to all who suffered from an unhealthy environment. Thanks to an approaching election, his effort was most successful. The city fathers put in force a series of sanitary ordinances whose existence had been forgotten and made and enforced still others, so that by the time the inevitable reaction overtook their virtue, much permanent good had been done. The cordial expression of thanks which was voted to Colden by the city was well deserved.

But the tale of his accomplishments is not quite told. He was particularly interested in the alleviation of cancer, and, besides a wide correspondence on the subject, he wrote two papers on its treatment and cure. One of these, in fact, which discussed the efficacy of pokeweed, or the great water dock, first brought him to the notice of Linnæus. Another paper on an epidemic sore throat which swept through New England about the middle of the century,[1] and a fourth on the medicinal properties of tar water, gained him much local reputation. In the sphere of moral and mental philosophy, he treated "The Operation of Intellect in Animals" with much originality, and of his "Principles of Morality" Samuel Johnson said: "Your beautiful little draught . . . has been read three times with increasing pleasure. It is an easy, gradual, and natural progress from physics to metaphysics and thence to morality."[2] Moreover, in this connection it is interesting to note his own theory of the relations of mind and matter as he states it in his letter to Dr. Whyte: "From the evident effects of wisdom and from a chain of effects all tending to the same purpose or end I conclude that an intelligent being exists, but I cannot allow that Intelligence can give motion or resist motion, for in that case I must with Dr. Berkeley deny that any other being exists, for on such sup-

[1] Addressed first to Dr. Fothergill in 1753 and published in 1755; republished in Carey's American Museum.

[2] April 15, 1747.

position they become useless. I conceive that Intelligence may give a certain direction when the direction of the action of these powers is determined by their power. . . . The Intelligent power never opposes the material or other powers, but the material are necessary to the Intelligent in producing a certain effect for a certain purpose." [1]

An "Introduction to the Study of Philosophy" for one of the naughty Delancey boys, a set of astronomical tables compiled from his own observations, and a translation of Cicero's letters at length completes the list of Colden's strictly non-political writings. He did not, indeed, bury his talents, and if he made the mistake of seeing them double and so diminishing his force at any one point, he gave to those who understood, an example of high ambition and ceaseless industry, which was an achievement in itself. It is pleasant to know that his faculties never failed him, and that he died after a year of retirement spent in cheerful intercourse with his family and friends, and only clouded by the beginnings of that Revolution whose shadow he had seen so long before.

[1] Colden Letter Books, I, 463–465.

# A COLONIAL SURVEYOR GENERAL

When the young Scotch physician, Cadwallader Colden, accepted the invitation of Governor Hunter to settle in New York, he did so on the promise of being the next surveyor general, the offices of weigh master and master in Chancery in which he was at once installed being of secondary importance. In the summer of 1719, however, Hunter went home on leave of absence with many assurances of a speedy return, and on his departure the administration devolved on the oldest councillor in point of service, Colonel Peter Schuyler. Schuyler and Hunter had not been friendly, and, moreover, Schuyler was intimately associated with one of Hunter's strongest opponents, Adolph Phillipse. Naturally enough, then, in the expectation of Hunter's return or the arrival of a new governor in whose selection it was known that Hunter would be influential, it was determined to make a full and immediate use of the power of patronage attached to the office of commander-in-chief. At this point Augustine Graham, who had actually been surveyor general, died, and in disregard of Hunter's promises Captain Allane Jarratt was appointed his successor. But Colden had a powerful friend at court. The announcement of this and other appointments left New York in October, 1719, and by the middle of April, 1720, Schuyler received orders to make no more changes and to appoint Colden in Jarratt's place. He could but obey, and Colden commenced his important and difficult task.

He found the affairs of the office in a state of almost hopeless

confusion.[1] James II, when Duke of York and proprietor of the province, had empowered his governors to grant his lands, and they had, on the whole, not abused their trusts. The grants of Nicolls and Lovelace, for instance, were mostly small, that is, under two hundred acres, but a previous survey was not required and the boundaries were indefinite. The grants stipulated variously for the *usual* rent, or for the usual rent and such services as the governor or his deputies might require, or, finally, for such rent as the governors might establish, or such rent as would later be determined by the laws of the colony. Sometimes the rent was mentioned, but it was not in proportion to the quantity of land, and, while occasionally considerable, was often a mere trifle. Improvement within a certain time was compulsory, and timber was reserved for the public. Andros, the third provincial governor, kept along the safe lines laid down by his predecessors. In addition, his grants named a quit-rent, which was usually one bushel of winter wheat for land enough for one family, this being one hundred, eighty, or fifty acres, according to the qualities of the soil. The bounds were generally clear, as there were few instances of grants without a previous survey, and the tracts were still small. Among the unsurveyed patents, however, Colden found one remarkable example of the necessity of carefully recorded bounds. Andros had granted two men of Albany a tract of two hundred acres, at half a bushel of wheat rent; in Colden's time their heirs claimed more than sixty thousand acres. But the rents of all these patents were decided to have lapsed because of the change to a representative government; so that during the first half of the eighteenth century there were more than a thousand holdings that paid nothing at all.

[1] Colden's Memorial to Cosby, O'Callaghan's Documentary History of New York, I, 247, and the Board of Trade's Representation, New York Colonial Documents, VI, 650.

New York now became a royal province, and the governors of such provinces could always grant lands under the reservation of certain quit-rents. Accordingly, Dongan, the first royal governor, was empowered to grant lands "under the reservation of such moderate quit-rents, services, and acknowledgments as he and his Council might think proper." The grants were first to be surveyed by the public surveyor, issued under the seal of New York, and recorded. The quit-rents were generally proportional to the quantity of land, and averaged one bushel of wheat to a hundred acres, their slight variation probably being due to differences of soil and situation. As a matter of fact the land grants which date from Dongan's time were never actually surveyed but merely estimated and described, and these general descriptions afforded an opportunity for fraud on a large scale. Tracts were bounded by certain turnings of certain branches of certain kills or rivers; they extended to the foot of certain hills; they stretched from one notched tree to another without measuring the distance between. Some patents granted a certain piece of "flatts" or lowland, with a certain number of acres adjoining, and mentioned no bounds whatever; others, a certain number of acres of *profitable* land, besides waste and woodland, at a time when the whole face of unappropriated country was covered with woods, some of the grantees, moreover, claiming about this time ten, twenty, or even a hundred times as many acres as had been originally named. Dongan, also, under what were stated to be simple confirmations, extended the manors of Phillipse, Livingston, and Van Cortlandt. However, his wise public spirit and the general blamelessness of his administration have caused these violations of his instructions to be ascribed to carelessness or an undervaluation of their importance, so that to his successor, Colonel Benjamin Fletcher, belongs the reputation of being the first governor to exploit the crown lands

for his own benefit. He seemed, indeed, on the point of completing the division of the province among his supporters when he was superseded by the Earl of Bellomont. The earl was a Leislerian, whereas his predecessor had led the opposing party, and it was his endeavour to bring everything to Fletcher's discredit to light. His description of the state of the crown lands and the crown surveyor's report resulted in a command from the home government that he use every means in his power to annul certain grants, and that in the future he demand a quit-rent of *2s.* *6d.* per hundred acres, exacting effectual cultivation within three years on pain of forfeiture. Accordingly, he induced the assembly to pass an act vacating the grants of Godfrey Dellius and others, of Colonel Peter Schuyler and Harme Gansevoort, of Colonel Caleb Heathcote, of Captain John Evans, and of Colonel Nicholas Bayard. This act, as was customary, he sent home for confirmation; but as months and years went by without a word in its regard, the assembly at length took matters into their own hands and repealed it.

Meanwhile, Bellomont had died, and the lieutenant-governor, John Nanfan, was in command. Knowing that his period of power would probably be brief, he determined to improve it to the utmost and, among other concessions, promised away his master's lands with hearty good-will. But the steps necessary to secure his promises had hardly been begun when word came that Lord Cornbury was coming out as governor. He and Nanfan belonged to opposing parties, and a mad rush ensued to get the patents completed before his arrival. The loosest descriptions were made to answer, and the custom of using the Indian words for natural objects in naming the bounds was instituted. In this way the Indians innocently helped along many a fraud, as the grantees used their common names for tree, hill, river, as the proper names of a particular tree, hill,

river, the confusion being increased by the Indian habit of calling different parts of a river by different names. Even before this it had become usual to grant a tract by its Indian name with no further description, though, as the Indians were not surveyors, this meant nothing at all. And again, lands, which did boast bounds, were frequently described as bounded by a certain Indian's lands, whereas it was well known that the Indians were never landowners in their individual capacity.

As might have been expected, Lord Cornbury used his privileges in proportion to his needs. It was believed that he opened negotiations with two gentlemen for a grant of the whole province, but they wisely decided that the resulting hostility would be unendurable. He, however, did his best without them. To one set of patentees he granted the Indian tract Wawayanda,[1] in Orange County near the Jersey line, together with some unnamed parcels of land. Blanks were left for the figures, but it would have been natural to suppose that Wawayanda was the most valuable and largest division of the patent, whereas the reverse was the case. To another group he granted the Great Minnisink patent, in Delaware County, the bounds of which were described as beginning at the Indian hunting-house, when there were probably between two and three hundred such houses in the claim. The patent to Johannis Hardenburg and company, lying principally in Ulster County, started from the same indefinite hunting-house; while still another grant to some Albany Dutchmen was described as terminating one mile beyond where the fence stood. From this period, also, date the long-contested patents of Kayaderosseres, in the Mohawk Valley,[2] Westernhook,[3] and Wagachemek.[4] Great as the confusion was, it was made still

[1] N. Y. Col. Docs., VI, 818, 839.

[2] This patent dated from November, 1708. See N. Y. Col. Docs., VI, 851.

[3] On the Canadian line.

[4] Waghaghkemick, in Orange County, granted to Thomas Swartwout and others in 1697. See N. Y. Col. Docs., VI, 927.

greater toward the close of Cornbury's administration by the tardy action of the home government, for then word came that Bellomont's vacating act had been confirmed and its repeal disallowed. The matter at last had excited the attention it deserved, and by the instructions to Sir Francis Lovelace, in 1708, the despoiled proprietors were to be allowed grants not exceeding two thousand acres for a quit-rent; three acres in every fifty were to be cultivated; and the land was to be laid out by the governor or the commander-in-chief, the collector of customs, the secretary, and the surveyor general, or any three of them, the surveyor general always being one. These were to proportion good lands to bad, to lay out the patents at right angles to the waterways, and to reserve the woods for naval stores, all trees of a certain size being destined for the royal navy.

During the administrations of Hunter and Schuyler, operations in land had been chiefly confined to the revision of the resumed patents, about one hundred and fifty thousand acres, for instance, of Evans's patent, lying in Orange and Ulster counties, having been petitioned for between May 14, 1700, and the date of Colden's appointment. Schuyler, however, and Schuyler's deputies had paid so little attention to the instructions that Colden's determination to enforce their strict observance found public opinion entirely unprepared for such a course. Moreover, he was himself ignorant as to the exact functions of the council in the distribution, and under the circumstances he was unable to get exact information from the commission and instructions. The matter was also affected by the political situation, and he was strongly urged, on the one hand, to yield whenever consistent with his duty, and, on the other, to delay all grants to the opposition in order that the governor might be left with some weapons to force their compliance.[1]

Colden's first surveying experiences were in the partially

[1] Letter from Lewis Morris, July 23, 1720.

cleared, but still wild and primitive, counties of Orange and Ulster, where was situated, as has been said, the famous Evans's patent, of which Colden himself had obtained a grant of 3000 acres, shortly after coming to New York. Of this patent he had before the close of the year laid out 18,960 acres, beside 14,516 acres in the surrounding region.[1] He had also defined his position in three test cases: he had refused to obey an incorrect warrant of survey, in which refusal he had been upheld on the petition of the would-be patentee; he had memorialized the council on another deficient warrant; and he had entered a caveat against the confirmation of 1260 acres to Joseph Budd, opposition member of assembly for Westchester County.

In the autumn a new chief came out, Hunter having exchanged office with William Burnet, collector of customs at London. When Burnet was almost ruined by his connection with the South Sea madness, George I had happily remembered that his father, the witty Bishop of Salisbury, had first mentioned to William that the house of Hanover was the next Protestant family in the line of succession, and in consequence came to his rescue with one of the best appointments in America. Thus necessity first turned William Burnet's attention to the colony which he was to govern, but when once this had been done, his interest in it became as sincere and unselfish as though he had undertaken its administration from motives of public spirit alone. To Colden, in his first enthusiasm over the possibilities of his office, the new governor came as a welcome ally. He went at his work with renewed courage, and for the next seven years, in the wild forests and swamps of the Mohawk Valley, in the Shawangunk and Catskill mountains, over the pasture and farms of Ulster and Orange, along the Connecticut border, on Westchester estates, and in the capital city and its vicinity, he did the colony a personal

[1] Calender of N. Y. Col. Mss., Indorsed Land Papers.

service of direct practical value. During this period almost the whole number of recorded surveys were made by Colden in person or at least in his presence, and no grants were issued without a proper certificate of a previous survey. His study of the records in connection with his work revealed many discrepancies in addition to those already mentioned. He found the Salisbury patentees claiming about seventy thousand acres in the Catskill region, at a rent of half a bushel of wheat, instead of the four hundred acres mentioned in their grant; those of Wawayanda, the acknowledged length of which was over fifty miles, encroaching on one of the resumed grants for nearly thirty; those of Minnisink asserting their right to above twenty million acres by a patent demanding a quit-rent of £3 a year. The last two grants touched on Evans's patent, Wagachemek and the province of New Jersey, and from the beginning to the middle of the century the conflicts of their patentees influenced colonial politics despite Colden's efforts to reduce matters to mathematical certainty. But this was difficult when, for example, a patent was registered to a Scotchman and a German granting several tracts designated by Indian names, together with twelve thousand acres, "anywhere altogether within their limits," the number being overwritten six times. Patents like these were already hindering the settlement of the country Sometimes, indeed, small portions of them would be granted by the crown as though no previous grants had existed. But no sooner would the grantee take possession than his life would be made a burden by threats of suits, or actual suits, in courts influenced by the large proprietor. Sometimes even more violent attempts at eviction were made, and tales of such experiences spread, turning many to the neighbouring colonies rather than to risk their repetition.

Many of these large tracts were held in common, and, some of the partners dying or disappearing from the province, acts

were passed from time to time to enable the living resident owners to divide them. Such an act was disallowed by the Lord Justices in 1719, but another was passed in July, 1721, despite the opposition of the new surveyor general. Burnet, however, vetoed it and sent it home with Colden's memorial. This contained besides the technical reasons for his disapproval a clear historical account of the crown lands, and offered certain conclusions for consideration. It seemed evident, he said, that the lands if managed well would supply the revenue. He had calculated that the returns from eight patents, according to their present claims, would bring in annually, at the rate of 2*s.* 6*d.* an acre, £4176. They actually paid a total of only £17 17*s.* 6*d.* Nevertheless, their present value being small, it would be impossible for their owners to hold them on such a basis, so he suggested that the assembly be induced to pass another act vacating the remaining exorbitant grants on the promise of consideration to the proprietors in case of their prompt obedience and a threat of an act of Parliament if they refused it. If these suggestions were thought too sweeping, he proposed an act of Parliament empowering the crown surveyor to survey all grants and forcing the grantees to enter these in the proper office.

This memorial so impressed the Board of Trade that they embodied it in a report to the king, and there the matter ended for a time. In the summer of 1724 another partition act was approved, but it was found unsatisfactory in its working, and two years later still another passed both houses. Colden, who had been admitted to the council in 1722, spoke against it at the first and second readings, but was not present when it passed. This was at the first meeting of the first assembly elected since that so favorable to Hunter had begun its sessions eleven years before. On the eve of the elections there had been an upheaval of public indignation on the subject of land monopoly. People

were actually being forced to send their children into other colonies because of the lack of free lands, when at the same time influential men were counting their acres by the hundred thousand and scarcely cultivating a hundred. The proprietors were really alarmed and hesitated to court a government inquiry by going on with the work of division. But at the elections some of the greatest of these landowners were returned, and one of the first acts passed was this partition act under the strong suspicion that it was done at once to gain their favour and show them their dependence on the assembly. Colden, thoroughly aroused, wrote to the secretary of the Board of Trade, offering a memorial against the act for the board's consideration.[1] The experience of the last few years had given him a text from which he was to preach many times. The colonists were doing their best to free themselves from their officials; their next act might be to throw off king and Parliament, and there was but one remedy — independent salaries for the necessary administrators out of the quit-rents. To the act itself he objected because of its repugnance to English law, its arbitrary methods, and its failure to provide for ascertaining the bounds, though he had himself offered to do so in most, if not in all, cases. Moreover, as it was said that after the division many of the grants were to be sold in small parcels, if the title of these was faulty, the loss would be the king's. For he would prefer this rather than to see the ruin of the small farmer who had purchased in good faith. Besides there was in reality no need of a partition act at all, as writs of partition could confer all the requisite power. Again, the Board of Trade was roused to activity, and again, they made a representation to the king.[2] Their conclusions, reached after due consideration and consultation with one of the crown lawyers, were Mr. Colden's own. They suggested, however, a different remedy in the form

[1] N. Y. Col. Docs., V, 805–809. [2] N. Y. Col. Docs., V, 843, 844.

of an additional instruction. This provided that patentees must cultivate three acres in every hundred within three years of possession or forfeit their land. Still, had this instruction been carried out, it would have had the same effect as the exaction of full quit-rents, owing to the high rate of wages and the difficulty of getting labourers at any price. Meanwhile, the year had passed by, and Colden had received no official answer to his memorial. The agent, however, had written enough of the interest it had excited to alarm the proprietors, and Colden was made to feel their resentment. Once more he wrote to the secretary of the Board of Trade his political convictions deepened by personal bitterness. The assembly that had passed the act in question and the new one elected on the news of the king's death in the summer of 1727 had shown their hands without reserve. They were determined to have the finances and the judiciary completely in their power, and they no longer cared who knew it. Colden eagerly assured the board that this was the true state of the case, even though apparent concessions might be made to the new governor to gain his favour. And evidently the longer this sort of thing was ignored, the harder it would be to stop it. So again he proposed to turn to land for the only remedy possible, a permanent salary fund. Unfortunately, grave as was his position, logical as were his suggestions, practicable as at this early date they may have been, their effect was spoiled by the personal allusions which he found irresistible. To be sure, this was a fault common to much of the correspondence of colonial officials in the eighteenth century, but it was not universal, and in the present case a bitter reference to a proprietor whom Colden considered his most prominent enemy formed so weak a climax to his argument that it must have greatly lessened its influence.[1]

By this time the first steps toward the final settlement of one of New York's contested boundaries had been taken. The

[1] George Clarke.

Dutch had settled on the Hudson and Connecticut years before the Puritan migration to the valley of the last-named river, and to all the country between the two they laid claim. This probably prompted the use of the Connecticut River as New York's eastern boundary in the Duke of York's patent, but at the time of Nicolls's conquest the colony of Connecticut had encroached to within ten miles of the Hudson. This gave her an equitable claim to that territory, which Nicolls was quick to acknowledge, for Dutch were many and English few in his possessions, and it was prudent to keep on good terms with his neighbours. In fact, in the bounds that he and his council arranged with the representatives of Connecticut the line crossed the Hudson about thirty miles from its mouth. But New York could not regard such an arrangement seriously, and in 1683 a second agreement was concluded.[1] By this the line was to begin at the mouth of the Byram River, follow the stream to its ford, and then extend north-northwest into the country for eight miles. Going back to the mouth of the Byram, the Sound was to be followed twelve miles to the eastward, whence another north-northwest line was to be run for eight miles, and the quadrilateral was to be completed by another twelve-mile line parallel to the general course of the Sound. From the northeast extremity of this quadrilateral, a line was to be drawn to the Massachusetts border, parallel to, and twenty miles distant from, the Hudson. East from this line as much was to be added to New York as had been taken from it by the quadrilateral. Some of the lines were actually run, the report of the surveyors was confirmed by the two governments at Milford in 1684, and the general agreement by King William in 1700. But Connecticut felt that overmuch had been wrung from her

[1] Colden's Remarks on the Connecticut Boundary, The Colden Letter Books, I, 301, 302; James Alexander to Colden, November 22, 1731. Colden to Major Woolcot, March 6, 1732.

at a time when, owing to the threatened withdrawal of her charter, she dared not but comply, and as soon as her fears were removed she disputed the jurisdiction of several towns within the territory conceded to New York. The consequent disturbances produced an act which Hunter signed just before he left, authorizing commissioners to complete and confirm the survey. Connecticut, fearing an *ex parte* line, pretended to follow this lead, but by an absurd subterfuge her commissioners were empowered to "perambulate" the lines instead of to run them, while her agent opposed, though unsuccessfully, the king's approbation of the New York act. New York remonstrating, her General Court passed an act censuring New York and contradicting the agreement of 1683. But she could hold out no longer, and after a preliminary skirmish the preceding year at New Rochelle, surveyors and commissioners from both colonies met at Greenwich in the spring of 1725. Those representing New York were Isaac Hicks, Francis Harrison, and Cadwallader Colden. Several other meetings were held at different points in the neighbourhood, but it soon became evident that the Connecticut men were designedly blocking proceedings, and Colden and his associates notified them that they were going to run the line *ex parte.* Before separating, however, they all met for a social hour, when Colden, knowing that an *ex parte* line would leave everything as unsettled as before, took one of the Connecticut men aside and asked him to say frankly what was the matter. He replied without hesitation that it was their concern for the people of Ridgefield. This township was situated in the strip to be conceded to New York, and its thrifty and prosperous inhabitants objected to becoming tenants of that government and buying their own improvements. Mr. Colden laid the matter before his fellow-commissioners, and negotiations were resumed, resulting in a survey and report by which all property rights in the township were to be recognized, though

proprietors were to be considered as tenants of New York and not of Connecticut. The New York council approved this report on May 20, 1725, but as the appropriation for the purpose had been exhausted by the delay, the running of the line was of necessity deferred.

Meanwhile, Colden and Burnet had been suffering the consequences of over-enthusiasm for reform, and when Burnet was finally superseded by Colonel Montgomerie, Colden found it wiser to retire for a time from politics and other town dissipations. Nor did Montgomerie become sufficiently interested in land during his short administration to make Colden at all necessary, and it was not until Montgomerie's death brought over Colonel William Cosby as governor that the surveyor general's office again became popular. Before that Colden had assisted in the final adjustment of the Connecticut boundary. Its survey at the cost of the government seeming as far off as ever, some Ridgefield farmers had proposed to several New York gentlemen that they run the line at their own expense, receiving as compensation the patent of the land that New York was to receive as an equivalent for her claim on and near the Sound. Among the New York men concerned were James Alexander, William Smith, and George Clarke, Clarke agreeing to the proposition only on condition of Colden's approval. This the surveyor general cordially gave, as well as a promise to supervise the survey, in return for which be became a shareholder in lieu of fees. The work went rapidly on to completion and the patent had passed the seal, when, in July, 1731, word came that a patent for the same lands, known as "the equivalent," or "oblong," and consisting of 61,441 acres, had been granted by the king to the Duke of Chandos and several other Englishmen with Francis Harison, member of assembly for New York. Mr. Harison, who was the city recorder, had been a friend of Burnet's, who had promised him a generous

share of the oblong. But before the plans for its division were consummated, he had gone over to the opposition, and it was only through Burnet's good nature that he received even a diminished portion. Still he was dissatisfied, and this was his revenge. A remonstrance was despatched to England, and in reply the patentees there offered two thousand acres to the American partners as a quit-claim. Meanwhile, Alexander and Smith had been collecting documents, including copies or originals, of all the steps taken in regard to the Connecticut boundary, and Colden had summed up the situation in a letter to one of the English patentees on which as evidence the English offer was unanimously refused. The best legal advice in England was retained, advertisements were put in the London newspapers, copies of the documents were distributed to the English patentees, and Colden was asked to draw up a memorial to the king and to make a sketch of a like memorial to be sent by the General Court of Connecticut, begging him to obtain the patentees' release or to void their patent by *scire facias* or otherwise. But Colden was dissatisfied with everything that had been done, and for some occult reason chose to consider the request that he sum up the case mere "banter." Indeed, it was only after some months and much urging that he consented to do his part. The final agreement had also been delayed by the demands of some of the smaller holders, and Harison hastened to take advantage of their contentions by attempting prior settlement under the English patent. He was, however, unsuccessful, owing to the prompt action of Alexander and Smith, and at length, on the 18th of May, 1732, the articles of agreement were indented, and the next week Colden received the warrants for the individual shares.[1]

About this time Cosby, who had only kissed hands for New York and New Jersey the preceding January, arrived in town

[1] Alexander to Colden, November 20, 1731, and December 23, 1731.

and immediately affairs political took on a lively tinge. For Cosby began by claiming more salary than the late acting governor thought his due, and in the ensuing litigation every man of prominence in the colony became to some extent involved. For his part Colden sincerely desired to hold aloof, but his most intimate associates, James Alexander and Lewis Morris, soon became Cosby's dearest foes, and though the governor had fleeting intentions of getting on a more confidential basis with the surveyor general, the latter's loyalty to his friends rankled and in the end prevented any real harmony with his chief. Cosby, however, had plenty of supporters, Clarke, Kennedy, Delancey, and in fact almost the whole council vigorously championing him against his predecessor, Rip Van Dam. Another strong ally was Horsmanden, to whom he had taken a quick fancy, and if this proved rather intermittent, it was exploited to good effect while active. Indeed, the fact that the governor had made the debt-ridden young lawyer a member of the council was one of the charges against him. At the same time Horsmanden in some way maintained the pleasant relations with Colden, begun when he had arrived in the country, supplied with introductions to the surveyor general and others and little else beside. For purposes of his own, he managed to keep in close touch with Coldengham, and his letters on matters of territorial and political import are illuminating.

"The Assembly are to sit according to Adjournm$^{t}$, the third Tuesday of this Month," he wrote Colden in April, 1733, "[and] I presume you will have notice but I hope you will be here punctually at that time for many reasons & among the rest because I have heard some Exceptions taken to members of the Council living at a great Distance out of Towne & w$^{th}$ what view I could not but guess." Such solicitude, however, was unusual, and Horsmanden generally wrote only to ask a favour. "I mentioned the Kingston affair to the Governor," he wrote

the next January, "and told him that you were so kind as to give me a share. All the answer I could get was that things must come on in turn. He says he is determined to take money in lieu of dirt in future and I fear Mr. Clarke has such a hold on him that he will grant nothing without his having a share."

This "Kingston affair" was a tract of land in the vicinity of that town which Colden had pointed out as likely to make the snug patent that Horsmanden desired. "I wish that you lived at a day's journey," the latter wrote later in the week,[1] "I just now press'd the Affair of Kingston to the Gov^r^ as far as I could in Decency, & insinuated a temptation to him to dispatch that affair, by suggesting that they might perhaps have something further to discover, when this was finished, and that he might probably have ready money for the share he demands; but all without effect. For he says, he cannot think of it 'til the Spring & he intends then to be up there himself, what he means by this he but knows. He tells me that for the future he intends to take money instead of lands: whether anything can be done with him in such matters I am not able to say: but he has often promised both Capt Long and myself such a good Lump of Land at once & if 6 or 8 thousand acres can be discovered worth asking for, we are determined to push it at once; Capt^n^ Long, I am Sure, he is exceedingly obliged to, & I think he is indebted something to me for my Services. The quantity & manner of disposing we leave to your discretion. . . . Mathews has a whole pacquet of news to joke with you upon." Colden again acted the friendly part, and still later in the same month Horsmanden thus naïvely acknowledged his good offices: "You have very much obliged me by the favour of yours of the 17^th^ Inst^t^ wch I received last night & was determined to lose no time in acknowledging of

[1] January 8, 1733/4.

them. Whatever Danger may be Apprehended from the Correspondence (tho' at present I am not aware of much prejudice) yet be the Consequence what it may I am determined inviolably to maintain & improve on my part the ffriendship commenced between us wch proceeds from my Real good Opinion & Sincere Inclinations towards you more than Self Interest. Tho really I have liv'd long enough in the World to judge from the frailty & necessity of human Nature: That no ffriendships are so strongly cemented as those carry'd on by mutual Ints & Services. Your profession with respect to my Friend the Captn & myself, we both think ourselves exceedingly obliged to you for, & ptic^ly^ as to the Land you recommend wch lys Intervening between the 20 m pattes & the Oblong, We must beg some further acct of it, what Quantity you may guess it contains, whether there is not a very fine Swamp in it or piece of Water wch may turne to very good acct by draining," etc. "You sit stil by your Country fire," he added later, "enjoying yourself & FFamily wth the utmost peace & Satisfaction, while we are in the midst of pty flames & where things will End I'm not prophet enough to foretell."

But if Colden was otherwise easy, Horsmanden was determined to keep him active in his service. By the end of March he had another scheme in view. "Yours dated from Albany I recd the 11^th^ Inst^t^. But not time enough to prevent the request of Captn Long & myself of the Gov^r^ concerning the 3000 [acres] recommended by Mathews wch was made 2 days before, but with what Success it will End, I cannot yet positively Determine. I wish I had recd yrs time enough I wo^d^ have punctually observ'd yr Directions, but The Capt^n^ & myself were resolv'd to make our utmost Efforts in the Request of so smal a pittance. We determined to ask for 3000 ^a^ as for Ourselves, ffor wch Reason we feigned as if The Countryman had offered to discover The land upon our Obtaining a Warrant

of Survey & Lodging 20 pistoles in a third person's hands to be paid him upon Our Approbation of the Land: & in this manner I first opened the m^re^ [matter] to his Wossp[Worship]: I told that the Quantity was too large for me to ask for myself agreable to his Instructions & therefore I chose to take Captn Long in a partner whom I under stood he had made a promise of Land to as well as myself. he sd there was nothing in that he wod have granted it to me But he must have his 3^rd^ & he wod pay 7 Pistoles for his Share & 6 more for me & Captn Long the rest. This was with an air of generosity to me but Captn Long was to pay more than a proportion: Now you must know we did not think it wod be any crime considering whom we were dealing with to put it on this footing but perhaps you will say we were out in our Polliticks & indeed I wish we had not taken that method, ffor afterwds we found ourselves under a necessity of telling the Truth of the case That now the Countryman insisted on an equal Share with the Captn & myself & I told him since this was the case I did not think twas worth while to meddle with it: But Captn Long attacqued him after^wds^ & askt The Grant of the whole to us two as we were to give a Declaration of Trust to The Countryman for 1000 acres which he readily promised him wch as was imagined he could not with any sort of Grace refuse him, tho' he certainly would to me: After this passed with the Captn I saw him again & he seemed to be somewhat netld & askt me who this Countryman was ffor he sd I might tell him as the Countryman had broke his word with me, but I answered him, as I shod have said I told him before that I had Engaged my word & Honour not to discover him & I was psuaded That if I gave his Ex^cy^ one Instance That I was capable of forfeiting so Solemn an Engagemt etc. I must give him a very bad Opinion of me & That he might expect I might Do it thereafter to himself. Therefore beg'd to be Excus'd whereupon

he went off in a huff & sd twas a Trick to cheat him of his 3$^{rds}$ & has lookt coolly upon me Since but I intend to desire his Explanation as the Declaration was general as to the pson he suspects of it & to battle it out with him. The Capt has just been with me & as the Gov$^{r}$ sd to me that there was an end of it, he intends to insist upon his word with him & I believe considering all Circumstances w$^{th}$ Respect to past favours or rather more for what they have further to ask, he'll not run the Risque of fforfeiting his ffriendship with the additional Reproach of breaking his word. I have since I wrote to you last mentioned The Aff$^{r}$ of Kingston at Esopus abot ye 8000 $^{a}$ but I am from his Conduct in that m$^{re}$ [matter] induced to think that he intends to lay his claim upon the whole for himself, ffor in the case of his 3$^{rds}$ as above he told me that the profitts of his Government were so inconsiderable that he was Obliged to make the most of everything, & yt twas customary for Govrs to take their 3$^{rds}$ of all Grants But it is nevertheless my humble Opinion That every pson upon his petitioning the Govr & Council has a Right to have that pet$^{n}$ heard & I believe wo$^{d}$ be thought at home to have a Right to have the Land discovered Granted to him. I'm sure that is the Opinion of Govr & Council in other Colonys. I know it is so in Virginia & I believe if such a practice as taking 3$^{rds}$ was to be laid open . . . it wo$^{d}$ be thought somewhat Criminal. The Captn is now returned & informs me that the Gov$^{r}$ ffathers the contrivance upon me & he knows the Land & tis very valuable, tis in Westchester & upon the River & 'tis for the Morisania family & that I don't use him well in not discovering the Author & that there is an end of the Affair: that he'll do nothing in it: so that you may judge how m$^{res}$ [matters] are like to go betwixt us: you are proved a true Prophet."

By August this indefatigable schemer had still another plan. "But I must inform you first of all," he wrote Colden on the 27th

of the month, " that the report Coll Morris told you of concerning my writing to Mr. Perry that he was dead & applying for his place upon that suggestion has given Captn Norris [who had married Miss Morris] such a spleen against me that nothing less than my destruction could, I suppose, satisfy his Resentm$^{t}$ so that he procured (not without some Industry I have reason to think) a power of Attorney from Some Creditor of mine, to sue me here & this was reported in Town immediately on his arrival with the addition of all the Opprobrious Language Billingsgate could furnish tho' upon Enquiry this ffact is denyed, & tis said only that he had it offered but refused the Office. I presume if he had it, the Morrisania family have advised him not to own it: But for an Instance to show that Providence brings good out of Evil, the Gov$^{r}$ has upon this occasion shown the handsomest kind of Resentmt upon his Returne from the plains by Assuring me that my Enemys shall not have their Ends. That he will do everything in his power to make me safe, & has promised me that as soon as his pattents are passed for the Governor's Lands I shall have 2000 acres of them conveyed to me without any expense & any other Lands I could get Intelligence of that wod answer my purpose . . . & then told me Mr Clarke had mentioned this 6000 acres & ordered me forthwith to prepare the Petition for the Indian purchase & he would have a Council in a day or two & it should be done. He also promised me the Recordership when Harison lays it down. In short his Behaviour upon this occasion has been exceeding kind & handsome, & the Lycence I have got accordingly wch I enclose yo. If you can do me any service upon the warrant you have already or in Recommending any other Piece of Land wch may be of service to yourself as well as to me, now is the time to Strike while the Iron is hot, pray let me know by the first opportunity whether you shall be from home any time next month for I shall

be tempted (I believe) to take a 2nd Race over your high Lands."

Naturally, Horsmanden's success in obtaining honours and acquisitions denied to many a better man brought him enemies, who made the most of his reputation for a rather shady impecuniousness. This, unfortunately, only incited Cosby to an even greater generosity, and Horsmanden wrote complacently in November, 1734: "This Scandalous & Villainous Treatm$^{t}$ has made the Gov$^{r}$ Sensible that I have not been the pson he suspected me to be from those good Offices I have endeavoured to do to those who are become my profess'd Enimys & has therefore engaged himself to pay a consi$^{ble}$ part of the Debt & has in the most Solemn manner assured my ff$^{ds}$ whom I prevailed with to sollicit this matter with him That whatever Lands I can get Intelligence of wch may be for my purposes & likely to sell & raise money upon he will Grant then to me if 'tis 6, 8, or 10,000£. Yourself & Mr. Mathews are the only ff$^{ds}$ wch I can hope for any service of this kind from. I am sensible that whatever you may be able to Communicate in psuance of this Request may probably be what he & you might most reasonably have designed to have found some Account in yourselves."

And for some undiscoverable reason Colden did thus serve this incorrigible beggar, and continued to respond to his overtures even when Horsmanden had become the American attorney of the English patentees of the oblong who had by no means given up the fight. "You pretty well know my sentiments as to ye equivalent that the L$^{ds}$ are not worth my Clyents Strugling for: But if they differ in Opinion & psist, I do think your grant must be destroyed & might & probably would be defeated if the English grant was out of the question & tho' (as some use the phrase) I am paid for thinking, I think I must declare so if I were not: I shall ever Remember your

kind proposall at Our parting with respect to the 6000 a[cres] Collins has the Survey for. But in my present Anguish of mind I did in the morning entreat your further kind Assistance which may in strictness be thought bearing too hard upon your good Nature: But if you Should think so I yet flatter myself from your ffdship & Candour you will excuse it from the urgency of my affairs at this Juncture . . . there is little (or I may say no) Hopes for Old Morris's being Restored Therefore nothing remains for him but to doe what Little Mischief more remains in his power."

Long before this Colden's own affairs had approached a crisis. Despite an undoubted willingness to take the opportunities Providence was throwing in his way, there is every reason to suppose that he had tried to do his duty as he understood it, and one of his first communications to Cosby had been a memorial on the province lands containing much old material but reaching certain conclusions that were new to his temper.[1] Starting with the rather unusual conviction that change and destruction is wont to spring from the landed class, he proceeded to evolve some decidedly conservative remedies. It was inevitable, he confessed, that any attempt of a government to curtail the property of its subjects would be looked at jealously anywhere, but especially so in America, where few grants were flawless and where the sympathies of the small and honest proprietor were with the unscrupulous monopolist who, naturally, could be trusted to make the most of this tendency. To prevent this, an absolute confirmation of all grants, save such as were "truly extravagant," might be of service, but the difficulty here would be successfully to avoid making the necessary exceptions either too general or too particular. He therefore suggested the abolition of all existing rents by act of Parliament and the offer of the confirmation of all grants on a promise to

[1] New York Documentary History, I, 247.

pay annually *2s.* 6*d.* a hundred acres. In this way the quit-rents would be restored and the exorbitant grants destroyed, for no one could keep them intact at such a price. It would be impossible to find a more equitable method of taxation, the merchants would be relieved, and the only persons dissatisfied would be the big landholders. In this way, also, the quit-rents, which he proceeded to estimate, and which at the time barely paid the recorder and auditor, could be made to cover the whole establishment, "and that Gentlemans place would be thought to be ill managed, when it only paid his Steward and his Clerk." Yet there was a difficulty here too. The people would realize that such a method would remove all salutary check on their officials, and Colden seemed to think that their consequent opposition would be well timed. He was, however, vaguely optimistic as to the probable discovery of satisfactory compensations. Unfortunately, this fair-mindedness went for nothing, and the manuscript of the memorial bears the following note in Colden's handwriting and dated May, 1752: "It is now twenty years since I delivered the above Memorial to Colonel Cosby soon after his arrival. I question whether ever he read it. I have reason to think he gave it to the person in whom he then confided who had no inclination to forward the purposes of it. It had no other effect than to be prejudicial to myself.

"The computations of what the lands would have at that time produced at *2s* 6*d* per hundred acres I believe were made within bounds. The settlements are greatly increased since that time more than in fifty years before it so that I make no doubt they will produce 6000£ a year, taking in a reasonable Quitrent for the house lots in the Cities of New York and Albany.

"I forgot to mention that it appears from the Records that numbers of house lots were granted under the yearly Quit-

Rents of one shilling, two shillings &c or some such small rent which I believe is now never paid."

Instead of considering the interests of the province as well as his own, Cosby was devoting his attentions to the latter exclusively, and not only demanded, as we have seen, a third of every patent granted, but petitioned quite constantly for grants for himself. When it is learned that well within two years of his arrival patents passed for 15,000, 27,000, 86,000, 15,000 again, 12,000, 25,000, 18,000, and 22,000 acres respectively, with many others for tracts varying from 2000 to 8000 acres, and when it is learned also that during that time he had asked for himself outright 48,000 acres, it will be seen that he had a large ambition. But he was dissatisfied. He felt that the surveyor general did not meet him halfway, and possibly, also, he was irritated to see a man whose whole attitude was superior, and who refused absolutely to scheme with him, adding steadily to his own possessions. "As to my part, I cannot value myself upon any great share in the Governours friendship," Colden had written his aunt, Mrs. Hill, in January, 1734, "but it is said to be some comfort to have many under the same misfortune. However the distance I am at from New York frees me from a good deal of uneasiness that could not be avoided were I there at this time. My endeavour shall be to maintain a Character of an honest man & while I do that I hope never to forfeit your esteem & love. . . . I have taken all the measures which I think prudent to guard against any attempts that may be made & I hope they will be successfull but they will create me some Expense."

These precautions, however, came very near being unavailing. In October Colden, who had just finished a survey of twenty-eight thousand acres for the governor, heard from Horsmanden as follows: "Our ffriend Mathews yesterday Surprized me with an Acco$^{t}$ That on Saturday Evening last You were Suspended

from your Office of Survey^r^ Gen^l^ If it be true, 'twas done in Such privacy that I knew not one Syllable of it. It could hardly be done in Council ffor I believe there were not at that time a Suff^t^ number in Towne with me, & there was no Council in the Evening that I heard of & I'm Sure 'twas not done in the morning ffor we all broke up & went away together: If this be true, (& I have long found that all the Secrets transacted there soon come to Light) you no doubt will Determine to goe home the first Opportunity in order to Doe yourself Justice & now two or 3 Ships are going.

"A Particular ffriend of yours has ever since you went been most Importunate w^th^ me for the Dr^t^ of the Bill in Chancery, his Scheme opens to me plainer every Day; . . . I asked him, between him & myself, how he came to come into it if 'twas such as he seems now so grossly to explode, he s^d^ he believed he was bewitcht: 'tis a most ungrateful task to me to have it fall within the Duty of my Profession that I am obliged soon in a Bill of Equity to charge my ffriend whom I am persuaded of being a man of Sense & Honour with Epithets that are odious to him & myself. But you know they are words of Course in such Cases, & you are in very Good Company, M^rs^ Clarke Kennedy A. V. Horne Vincent Mathews Alexander & Smith &c who will have a Share with you:

"But if this matter be true, That you are actually Suspended; I am aware of anor Drift of your Adversarys in pressing & hastening this Bill so much w^ch^ if the Design be as I Surmise will be in Effect Tying up your hands to cut your throat i.e.) If the Bill Sho^d^ be filed time enough, & you sho^d^ be preparing for England To endeavour to Stop you by a Ne exeat, for w^ch^ Reason I do assure you I will stay my hand as long as possible, & if there is any Danger in that, you shall not fail of knowing it; & 'tis but keeping over at Hoebuck whilst your Son by your Directions prepares your things here & so to go on Board from

thence: This, nothing less than the Sacred Tyes of ffriendship & the Value I have for you & the Confidence & Trust I impose in you could have prevailed on me to Communicate . . . & you may be assured: That whatever I can imagine hear or think of w$^{ch}$ may be for your Service to knowe consistent with my honour & Conscience to impart, you Shall have from me."

As it happened Cosby had not come to the point of suspending the surveyor general. He must have known that his conduct since arriving in New York was receiving stiff criticism everywhere in England, and perhaps he thought he would try, even thus late, to follow some of the good advice he had been given. "Upon Account of my Friendship for him [Cosby]," the secretary of the Board of Trade was about this time writing to Colden, " when he went to New York, I desired of all things that He would create an intimate Friendship with you, because I knew he had much to expect from the Friendship of a Man, with your Knowledge of the Nature of the Government, and of the Temper, and different Inclinations of the People he was to govern. As I judg'd this, to be the most effectual Way to prevent Complaints, I wish he had follow'd my Advice, because I am well assur'd you would have led him into no Scrape.

"A Governor has at first, a pretty difficult Lesson to learn, and if he falls into right Hands, he may certainly pave the Way for a peaceable, & an agreable Way of making his Fortune; But otherwise, he opens the Door to Complaints, & it may be, some cannot be easily wiped off." Still Cosby had gone so far as to make out an indictment of this desirable friend, the article thereof with which we are chiefly concerned accusing him of taking fees for the survey of land grants. But as his office was of the greatest importance to the government, and was at the same time unsalaried, it was understood that the compensation without which no man could have been expected to perform its duties was to be in just this form, and Morris, to whom Colden

left his defence, would have found it easy to sustain this point. The fact was, he said, that the governor found the surveyor general too honest. Nevertheless, it is somewhat difficult to see how Colden reconciled these fairly exorbitant grants to himself. To be sure, he was not the only one concerned, and it might have been foolish for him to refuse his own emolument and the aggrandizement of his family when the whole council was consenting thereto. It is true also that the grants were often, and perhaps always, made to several parties in the name of one, but this was after all rather an objection than a justification, on account of the great difficulties already experienced with lands held in common. He could, however, honestly say that he had paid strict regard to the crown's rights by exact surveys and accurate registration, and to the Indians by insisting on treating them with the most punctilious honour at a time when their spoliation was considered the white man's right. Nor did he forget the humble settler, and in October, 1734, induced the governor and Secretary Clark to offer one hundred thousand acres to the first Protestant European families to arrive in the province, at the rate of a hundred acres to a family, free from all charges but the expense of the survey.

"A certain worthy good ffriend of y$^{rs}$," Horsmanden informed him later in the month, "in conjunction w$^{th}$ ye Secr$^{y}$ has proposed a Scheme for Granting away all Remaining vacant Lands in Evans Grant & in order to make it goe down the better some of the Council were offer'd to be Lett in for 2000 $^{a}$ apiece, and tho' I am not well pleased to see it going in this manner Yet I could, (as I otherwise wo$^{d}$) have Refused for Several Reasons. The Gov$^{r}$ seeming pleased with the thing is one & others you may easily guess at. . . . But a pet$^{n}$ has been presented & granted & Warr$^{t}$ of Survey ready to Sign & Directed to yrself w$^{ch}$ was more than I expected, But I am in hopes the Report concerning you is Groundless.

The Bill in Chancery I shall keep in my hands as long as possible tho' I'm teased to Death abo$^{t}$ it."

This bill the American partners had been subpœnaed to answer in April; and Colden in Ulster, without any law books, and Alexander and Smith in New York, with all the province afforded, were drawing up exceptions to that very court in which Colden had once been master and which he had often warmly championed. "As to the Oblong Bill, my Dr$^{t}$ was finished before X$^{t}$mas;" wrote Horsmanden early in 1735,[1] "but Machiavall & I disagreed abo$^{t}$ many particulars in it wherefore when 'twas got from me, it was thought proper to be altered & new molded accd to his own Scheme, in such manner that it was not thought proper to Trust me with a sight of it, for fear I sho$^{d}$ have Reasons to produce Suff$^{t}$ to Convince others concerned, that mine was rt & his was wrong, wherefore according to his usual method of proceedings recourse must be had to an Indirect way of compassing his Ends, by procuring a meeting of all Lawy$^{rs}$ concerned & so to have a Cursory Reading of the Dr$^{t}$ & thrust it down their throats, & extort an approbation, & it happened very well for him & me; th$^{t}$ I could not be present at the meeting, w$^{ch}$ Spared me Some Trouble, as well as the Necessity of Showing Some Resentm$^{t}$ from such ill Treatm$^{t}$ ffor in a Regular way of Business most certainly the Dr$^{t}$ Sho$^{d}$ have been Returned to me, with Reasons in Support of the Alterations, & Information by whom such Alterations were made, & in point of Good manners my Dr$^{t}$ Sho$^{d}$ not have been altered, but proposalls have been upon Separate paper with References to such places offered to be altered. This is not Ceremony in me, but the Regular method of doing Business; however it is engross'd & fyled, without my Seeing it." As it happened, Horsmanden's preparations, as well as those of his opponents, went for nothing. Cosby flatly

[1] April 2.

refused to consider the exceptions and, emphasizing the fact that they were actually presented by members of a committee of council who had handed in a report upholding Chancery only eight years before, pertinently asked what sort of advice he was to expect from them. He then ordered the defendants to appear once again with another defence, for which order he shortly received the warm approbation of the Board of Trade. Its secretary, however, was greatly disgusted. "I have receiv'd yours, of the 12th of June last, in relation to the difficulty which has lately subsisted between Col: Cosby & you," he informed Colden, "in answer to one that I had wrote to you, as I likewise had done to him, and at the same time upon that Subject. By what you have wrote, I cannot forbear remarking that Col: Cosby, has had so much regard, for what I had recommended to him, as to take the first Step, towards renewing a Friendship with you, and I am inclined to believe, that my Endeavours for a reunion, between you two might have succeeded, had you not opposed his measures, particularly with regard to the holding a Court of Chancery at New York.

" Upon this Occasion I cannot help being Surprized that you who was so Strenuous for it should now oppose the holding that Court. However different you may be in Opinion, from what you then were of, Col: Cosby will certainly stand justifyed, In having pursued the directions of his Commissions and Instructions in this respect; This Court was established at New York, in the very infancy of that Colony by the Crowns undoubted Right signifyed to the then Governor under the Broad Seal of this Kingdom: Successively confirmed under the Broad Seal in every Governors Commission that has been appointed since, and which must therefore consequently be deemed an essential part of the Constitution of that Province. And if the Assembly, will but consider that they set only by the same authority, that Supports the Court of Chancery: . . . surely they would not

have ventured, to oppose the one since at the same time they effectually strike at the Foundation of the Other.

"I have in this manner endeavour'd to set the Affair of the Court of Chancery in its true light: and if I am happy enough to have said anything that may be convincing, I am the rather pleased because as your difference with Col: Cosby, relates chiefly to his Establishing that Court, this may tend to the renewing of your Friendship, To which good end, I hope slight punctilios will never be a hindrance." The secretary's suggestions came too late. When they arrived in America Cosby had been overtaken by his last illness and had put the finishing touch to the controversies of his administration by suspending his natural successor, Rip Van Dam. "How unhappy a Circumstance it would be, if at this Juncture it should please God to take him from us!" sneered Horsmanden, "Jerry, The Agent has had 300£ sterling Bills protested So that the Oblong affr. seems at present to be in Suspense. No Soul here has heard a word from F. Harison (as 'tis said) not so much as his wife or ffamily: . . . Don't be Surpriz'd if the next news is that he 's turned Monk in a Monastery abroad for the Sake of Good Living. . . . G: Clerk prays heartily & hopes in God the Govr. will do well." And again: "The Govr. still continues in a dangerous & almost desperate condition . . . he has returns of Coughfing fits, . . . and his fitts of this kind often throw him into Diliriums, in wch. it is said he has sometimes talkt most Sensibly, wch., tho' a Seeming paradox, is capable of Explanation for being a Contradiction: ffor it is whisper'd that he upbraided Madams Conduct in Such Lively Colours that She fell into a Swoon: In Short, I saw her a few days ago, & she seems to give so much Credit to Dr. Standbuffs (the most discouraging of the three Doctors attending the governor) opinion that she talkt in a manner dispairing of his Recovery. I find the new president pays great deference to the last

mentioned D^rs^ Judgm^t^ & is not unwilling to believe him prophetical.

"As to the pacquet, it has been sometime since open'd, & brought forth a letter from the Board of Trade, It was Suppos'd, The Governess had peep'd into it, long before She own'd it to have been opened before The Gov^r^; ffor it was sometime before reported from her (as Suppos'd) That V. Dam & Alexander were out of the Council, & that The Mandamus for swearing in Moor & Richard were in the pacquet. But the Burthen of the pacquet appear'd to be a Letter from three L^ds^ of Trade Intimating That they had Recommended the above to be Displaced from the Council & the others in their Room, This the Novices in polliticks took to be The unum necessarium, w^ch^ they were afterwds undeceiv'd in, however this was shown about to a great many & amongst the rest I happen'd of a Sight of it, & it has something in it of the Chancery upholding the Jurisdiction as formerly & approving The Conduct in not suffering the Exceptions to be argued in The Oblong Affair; w^ch^ Since I have mentioned I may Observe to y^e^ Remains at present in suspence for want of Cash."

Another letter urging Colden to hurry up several patents, in which the forehanded Cosby family were interested, so that they could be registered while its head was still living, was soon followed by news of his death. Clarke was now chief of the province, and Alexander and Morris were in a far worse position than before. Yet though his friendship for these men was as strong as ever, Colden soon managed so to ingratiate himself with his new superior that outwardly at least they worked in perfect harmony. In a way this was not hard to understand. Since the false report of the suspension Colden had been so absorbed by the actual labour of his office, fairly living in the Mohawk wilderness or on the outermost reaches of Ulster, Orange, and Dutchess, where the demand for land was greatest,

that he had had little time or attention to give to party bickerings, while he had presumably satisfied even Cosby with the favours he showed him. Then, too, Clarke was a man of fine powers, and commanded and understood the situation as neither Montgomerie nor Cosby could possibly have done, and even if he was as personally grasping as his predecessor he had the sense to perceive that his interests were not alien to the king's, his master's. He was, moreover, as interested as Colden himself in the development of the New York frontier, and claimed the credit for suggesting to Cosby that he advertise in Dublin and Amsterdam the inducements he offered to the Protestant settlers. He was also fired with a desire to press back the advancing French, and had many schemes to that end. With such likeness of aim the two men were almost sure to come together even if there were no question of self-interest. It was long since Colden had worked with a governor who understood what he was doing without being told, and he appreciated it.

One of the first achievements of the new administration was the suppression of the petition for a tract six miles square in the Mohawk Valley, made to the king in England by one of the Livingstons and a Mr. Storke. Mr. Livingston probably had as complete a knowledge of the lands of his province as any man not professionally interested; but he pretended uncertainty as to this particular tract, and Secretary Popple wrote asking whether it had ever been granted, and particularly whether it included the land for which the Albanians had fraudulently obtained a deed from the Mohawks in Montgomerie's day. Fortified by the opinion of the Albany common council and that of the Indian commissioners, Clarke [1] promptly wrote that to grant a patent for land that had not yet been purchased would rouse the Indians. Moreover, as no quit-rents were to be exacted for this patent until it became

[1] June 18, 1736.

self-supporting, he could not imagine if such terms were once given who would ever take patents on any other. But it was not until Colden had completed his survey of the matter that the governor could write with authority.[1] According to the map on which the petition was based, Colden had found one of the real bounds omitted, and estimated that the tract in its true limits extended for one hundred and thirty miles along the river. Indeed, so much of its alleged extent was already granted that it was evident that no one would ever pay half the cost of an English grant for what was left. Even then it would contain at least thirty miles already granted. In short, land was so cheap, so easy to get in the colony, that an attempt to secure it in England clearly showed some private view which demanded a secrecy impossible at close range. Above all, the custom of English patents was pernicious in the extreme, as no one could tell at any time exactly where he stood.

The English government did not take his argument so well to heart as never to run the risk of again making a similar mistake; but another reform, brought about indirectly by Livingston, proved more lasting. On one of his surveying expeditions to the Mohawk Valley, Colden found the Indians greatly disturbed. He tried to discover the cause, but several interviews with leading sachems failed to elicit any definite information, though they talked much and vehemently of some fraudulent land deal. At last Colden came to the conclusion that the interpreters were playing him false, and the Indians being impressed in like manner, they managed by certain signs to make him understand that some persons had by a trick obtained a deed of the very land on which they lived. He could get no further particulars, but on his return he memorialized the governor in council, with the result that a new regulation was formulated which made it practically impossible to purchase land from the Indians otherwise than honestly.

[1] May 28, 1736.

In the land office, affairs in Clarke's administration proceeded much as they had done in Cosby's. The same big numbers, the same steady activity, prevailed, and the only difference was that Clarke's name never appeared as Cosby's had done. He must already have had as much land in his own right as even he wanted and could afford to trust to his perquisites. Whether Cosby or Clarke were governor, also, Horsmanden's schemes were the same, and in July, 1736, he wrote accepting some offer of assistance Colden had made him and asking him to divide two thousand acres into thirteen parts.

"I own it Requires a very great appology, for requesting you to enter upon so Troublesome a Jobb, but I flatter myself from the Instances of your Friendship & Good Inclinations tow^ds^ me from the first of Our acquaintance That I may be excused. . . . Captn Warren has made a very Great Purchase of M^rs^ Cosby at Boston 13,000^a^ of the Gov^rs^ Land . . . for 110£. How she became so Infatuated I know not, . . . but so it is. Which being done I suppose The Capt^n^ will have no thought at present abo^t^ getting any other Tract, & I understood as much from the Chief Justice the other day talking upon This Subject.

"Therefore if you are persuaded That The Residue of the Indian Purchase at Connajohaire is good Land, I should be glad if I co^d^ have a good Slice with yourself & other ffriends, ffor as Lands are the best View I have of making money now, I would willingly make the proper use of the presidents ffriendship. . . . M^rs^ Cosby recd English Lres [Letters] at Boston, whereby we hear That Morris is out of all hopes as to his Solicitations That those Great men who were his patrons before are now convinced That his Complaints proceeded Rather from Spleen & Malice than anything else." And again in December he writes: "Zenger is perfectly silent as to polliticks, . . . and Old Morris is retired to Hell Gate, . . . & says the Devil may

take 'em all but if his natural disposition will let him be at rest, I am mistaken in the Man.

"As to anything you can Serve me in abo$^{t}$ Lands, I must rely entirely upon your ffriendship & generosity, it is not in my way to find out such Land as will answer my present purpose to get a Grant of. If you can serve me in that respect in the Spring, you'l lay a very great Obligation upon me & now I wish I could come & have a hearty Laugh with y$^{o}$ at the Coll$^{s}$ Returne."

Absorbed as he must have been by the stirring events of the first months of his administration, Clarke managed to keep in touch with its smallest details. For instance, in writing of a Mr. Heyward, an assistant of Colden's, he says that he seems "to be pretty well acquainted with the places that he thinks will ascertain the bounds of Evans's Grant and to encourage him I promised the Reward you mention, . . . Blagg came w$^{th}$ him who was about to make Some overtures as I apprehended on the foot of Heywood's discoveries, but I stopt him by telling him that you having wrote me about those Lands I could say nothing to him; before Heywood came to me Noxon was with me telling me that there was a friend of his in Town who had made some discoveries wherein the Northwest line might w$^{th}$ certainty be finished, and proposed a grant for himself his friend & me. I excused myself and told him whoever expected a Grant must be at the Charge of finishing that line, this he said he and his friend would do, whom I then and not before understood to be this Heywood, who he told me had a letter from you to me: But . . . I shall have an opportunity for Speaking with you or of hearing from you before anything be done; If there be no need of running that Nwest line further he can have no place to ask for a Grant from what I said to him; Had Heywood been w$^{th}$ me first, I could have stopt his mouth as I did Blaggs, but it may be Noxon concerted w$^{th}$

Heywood, who was the Bearer of this and of the Lycence wherein I wish you Success . . . I choose as farr as I can to give every one Satisfaction."

As time went on Clarke gained fair control of the turbulent, the sullen, and the merely critical who had contested or disapproved his promotion; but his position never became a sinecure, and he realized that to relax his hold for an instant would be disastrous. To an extent Colden was associated in his policies and schemes, they shared many of the same enmities, and, as in the affair with Laughlin Campbell, mutual loyalty was a necessity. Yet, somehow, Colden never felt sure of Clarke, and years after his departure from the colony believed the former lieutenant-governor to be injuring him abroad. He had therefore tried to be not too deeply concerned in the political game, but even so the years of that administration proved full of occupation for him. Not only were his agricultural experiments more absorbing than ever, not only had he never been so interested in scientific research and intellectual projects of various sorts, but the work of his office had never been more exacting. Clarke's determination to turn the tide of settlement toward New York ; to keep the inhabitants already within her borders contented and happy ; and to prove that she had great natural advantages over Pennsylvania — which had become the colony most attractive to the emigrant — was partially successful. Rents went up, building commenced again, and every one wanted land. But this desire was so far from being definite that the would-be proprietors rarely had any particular land in view and Colden was in constant receipt of letters such as this: "Perhaps you will be surprised when I tell you that I have intentions of becoming a petitioner for Land in the Mohawks country but its really true, the Govr having been so good [as] to promis me and some of his children a grant if we can find out that which is

worth patenting, here is six of us that intend to which with you or any one of your family whom you will please to name will require 14,000 acres at least. The great difficulty is how to find good land which is vacant which difficulty no one can surmount but yourself, and as you are going to that Country its possible you may meet with that which is good, which if you can do and make a purchase of it from the Indians to be paid upon the obtaining a Lycence for that purpose which we shall do upon Notice we shall readily Comply with such agreement as you think fitt to make on our behalf." Betty Colden doubtless brought Peter Delancey an excellent dowry of broad acres, though large frontier estates were not likely to yield quick returns or prove readily convertible assets.

Others of his correspondents merely wished advice or information or even a map of their land. "I observed heretofore," wrote James Alexander, after a request of this last sort had been made and granted, "that there was very bare Measure in my patent so bare that I found it would bee Deficient $11\frac{6}{10}$ acres Supposeing the Lines held out their Lengths, & Supposeing no allowance for highways. . . . The Error I fancy must arise by John McNeals S E Corner. . . . I should be glad of your thoughts on this head & how the matter may be rectified that justice may be done to every one. . . . You say right that what was called the Country party is very weak in this Assembly," he added, "but I hope they'll study the interest of the country and if that they do to the best of their ability, Its very Indifferent of what party they have been."

In this administration also Colden, as a member of the commissions appointed to do the work in either case, assisted in the settlement of two important boundaries. In 1737 the line between New Hampshire and Massachusetts was fixed, and in 1741 the bounds of Rhode Island were first run and then published at Providence, the finding of the commission being

later confirmed by the king and council. Long absences such as these and the increasing detail of his work had forced Colden to add to the number of his deputies; who, however, increased rather than relieved his anxiety, for he found it hard to secure the perfection or even the honesty he demanded. But though he was a severe master and quick to express his disapproval, his employees were apparently glad to serve him, and if they disputed the justice of a rebuke, only did so in order to convince him that it was ill placed and that they were his faithful servants.

Still he was not perfect himself, and his activity along all these lines was not sufficient excuse for one piece of abject carelessness, which only affords another illustration of the trouble his friends always seemed to take in his affairs. In December, 1737, the elder Smith, who, with Alexander, had managed the affair of the oblong, wrote to Colden that the accounts of the partners had been made up, telling him his share and asking prompt payment in order to save as much interest as possible. Just two years later Joseph Murray, who had argued the case in court, wrote the partners that he had received as yet only his retaining fee, though besides his legal services he had loaned the syndicate considerable sums. He had therefore filed a suit against them in the Supreme Court, which was to come on in the January term. This letter Smith and Alexander enclosed to Colden, recalling Smith's letter of two years before. They could not, they said, blame Mr. Murray, nor should Colden blame them for asking him to say whether he would pay the balance of his share with interest and his share of the costs of Murray's suit; or whether he would give them an I. O. U. for the same; or whether, if he was not satisfied of the justice of the claim, he would send them a power of attorney. If he would choose none of these lines of action, they notified him, they would issue process against every partner to compel payment.[1]

[1] Colden Mss., 1737–1747, December, 1741.

To which extraordinary forbearance Colden replied that he owned his negligence in not looking over the accounts when in town, that he had no objection to paying his share, but that he did wish first to assure himself of its accuracy, which he should do on his first visit to the city. He, moreover, hoped that they would not put those willing to pay to any unnecessary charge by a prosecution, adding that while he was satisfied of the necessity of Murray's suit for his debt, he was ashamed that he should have to sue for his fees and consequently wished him to delay action in order that the partners might reward him in proportion to their gratitude. Yet Alexander and Smith were actually obliged to write again in December, 1741, four years after their first letter, that whereas Murray had delayed the suit against them because of their promise to pay interest at reasonable times, Colden's continued failure to do his part was about to precipitate another action, for which, again, Murray could not be blamed. "We have often told you and you well know," they said,[1] "that M^r^ Kennedy & Coll Mathews Depend upon what you do and that we cannot without the greatest Reluctance & necessity take process against either of you and to take the process agreed upon by the articles of agreement against the Rest & not ag you would be said to look like partiality wherefore we Begg you to consider That this our regard for you Kennedy & Mathews tyes our hands . . . and . . . we must either pay three or four Hundred pounds out of our pocketts or take the Steps the Law allows and which had it not been for the reason before we should three years ago have done and are Resolved this Winter to do upon your answer to this or a Reasonable time & opportunity of answer." To this Colden in turn replied that since the preceding spring his absence in New England, sickness in his family, and a contagious disease in the neighbourhood must be his excuse, but that for the rest of the

[1] December, 1741.

time he had none to offer. "I am very much obliged to you and Mr. Smith," he went on,[1] "for the regard you show me but as I have not time now so much as to look into the accounts which I formerly had & which I suspect differ from the enclosed & as I have no certain conveyance even of this to you any delay now given to what you expect I hope will not be attributed to negligence or willfull delay I hereby however promise to pay to you or Mr. Smith the ballance due by me on the account of the Equivalent lands with Interest from the first of this month on the terms fixed in your joint letter of this month within a year after the date of this. This I hope will be sufficient to enable you to proceed against the others without any Imputation of partiality." In May, 1742, however, Colden finally settled his accounts, though, by sending in a counter bill by which he charged for his own services and for interest thereon, he reduced his debt to one-fourth its original amount.

By the arrival of George Clinton in 1743, the prospects of the surveyor general, which had on the whole been more than fair under the Clarke régime, darkened suddenly, for the new governor at once attached himself to the Delanceys, with whom Clarke had been at odds and between whom and Colden, despite a family connection, no love had ever been lost. Out of politics for the time being, the outbreak of the French war soon put an absolute check on land speculation and investment, and for many months the only real satisfaction of an official nature that Colden enjoyed came to him when the Mohawks openly demanded that Chancellor Livingston's patent for a large tract of land, which they said he had never paid for, be revoked. "It is a vile family," said Clinton, thus confirming many a warning. Unfortunately for Colden, his time of retirement was brief. After a while, owing to the desertion of the governor's first advisers, he began to receive advances from Clinton, who,

[1] December 19, 1741.

indeed, continued to make them until he succeeded in winning a new mentor. But, though Colden had yielded more from duty than inclination, or at least thought that he had, once in the toils he determined to make the best possible use of that which fate had sent him. Once again, this time through Clinton's pen,[1] he informed the government that the provincial officials should have a safe salary; that the quit-rents as due at the rate of £2 6*s*. per one hundred acres would yield £4000 annually; and that this was more than the assembly had ever granted. The abuses arising out of the partial construction of the regulations made in regard to the granting and the holding of land had improved not at all since the days of his young manhood, and to this fact Colden attributed the conditions already so deplored by Clarke. With all her superior commercial and physical advantages, New York was undoubtedly being proportionally outstripped in population and prosperity by her neighbours. But, Colden later wrote to Shirley, it no longer seemed possible to institute a reform save by act of Parliament only.[2] A stricter administration of the Chancery Court, for instance, though apparently the true solution of the difficulty, would prove none at all. The governor was also chancellor, and could never withstand the storm of accusations of self-interest and unfair dealing which would break out at the slightest attempt to enforce his instructions. Equally fatal would be his (Colden's) own advocacy of any measure, so great had been his unpopularity ever since the defeat of the Partition Act of 1726, brought about, as it had been, by his influence.

Perhaps for this reason, as soon as peace became a fact Colden began through the devoted Alexander to take steps toward insuring himself a life tenure of his office by the grant of a commission during good behaviour, planning also to ask its

[1] New York Col. Docs., VI, 378–380.

[2] July 25, 1749, Colden Mss., 1747–1754.

reversion for his son, who was in the meantime to share in its execution but not in its profits unless by Colden's gift. It was two years, however, before Alexander felt that the right moment for his mission had come, and it was January, 1751, when the commission to the desired effect was obtained.[1] By this time the land office was fairly active again, and the governor's family were taking care that they should have something to carry home with them. Already vaguely hurt by what seemed indifference on the part of his chief ally, Clinton felt that Colden was not assisting him in this laudable endeavour as he should. "His Excellency being very busy in answering Letters recd by Dean who arrived Wednesday has order'd me to acquaint you that as he shall always have a great Value for those Gentlemen that stood firmly to him, in opposition against the vile Faction & will continue so to do them Services as long as it is in his power. And as Mr Holland has been remarkable that way, & has lately lost a Post, that he gave him, which loss his Ex$^{lly}$ would if possible make up to him if he could so you will observe enclosed is an Offer to him, which may turn out to his advantage, for which reason His Excellency desires you would immediately answer that part of it which is referred in it to you. . . . Please to excuse blotts & Erasings for I have not time to write it over again. . . . Inclosed is a Draught of the vacant Land at Schoharie which please to examine with other draughts of patented Land & return it again to his Excellency."

This was followed the next day by a letter from Alexander. "Doctor Ayscough acquainted me this morning that his Ex$^{y}$ Supped abroad last night with Some Gen$^{t}$ that he was apprehensive had used insinuations with His Excellency to your prejudice. That his Ex$^{y}$ rested ill last night and this morning expressed to him Some of what he believed were those insinuations.

[1] Records of the Executive Council.

"After the Doctor's acquainting me that in General you delayed the patents that you might have the fees of them &c I told him there was no giveing answers to Generals and begged he would set down particulars & I could Communicate to you not doubting you would give a Satisfactory Answer to such particulars.

"Thereon the Doctor wrote the above notes and promised to bring me a list of the patents ordered therein pointing out which of them lay at your door to Expedite."

According to these notes Colden had delayed Colonel Johnson's grant for the want of a quadrant; had also delayed Mayor Holland's because of some defect in order to supply which it had been sent up to Albany; had neglected to return the survey of several other patents; and had received visits from Livingston and Beekman. Besides this list of crimes, the notes requested that Colden report on Livingston's petition so that Clinton could answer the ministry if asked about it, while he was to leave the details of the contract by which he was to supply firewood and candles for the fort garrison entirely to Alexander. "As to Livingston's being with you," Alexander proceeded, "I told the Doctor that it was on my recommendation, in order to advise with you, and have your assistance. . . . That Beekman had Employed your Son Cadwallader to make Some Surveys for him concerning Causes that he has depending at Law, And I Supposed that was what brought him to your house, That I was concerned in those causes against Beekman, but was not in the Least jealous for that reason. . . . Doctor Ascough has read so far & approves it, & gives his hearty Compliments to you." "His Excellency may depend on my doing everything in my power to serve his friends," Colden promptly replied, " & that I shall likewise have a particular pleasure in obliging Mr Holland. It is impossible for me to know whether the Map of the Survey

inclosed in yours to me be true or not because it appears from the face of it that there must be an error either in it or on the Surveys of the patented lands. By the Map which you send me the Vacancy amounts to 887 & 270 acres in the whole to 1157 Acres. But if the Surveys of the patented land be right the Vacancy amounts to above 1500 acres. As in your letter you mention only the first Quantity Therefore I think it most prudent to Petition for the Vacant Land without mentioning the Quantity but any Quantity which shall be found vacant not exceeding two thousand Acres. The great Patent at Scohary to Myndert Schuyler was granted before I was in the office & I have no register of that Survey & consequently cannot examine this Map with it. When the Petition shall be made & granted I cannot return the Survey to the office till a Survey be made of the Patented lands in order to discover what Vacancy remains for I cannot be warranted by trusting to a private Survey don I know not how or by whom."

"I must say I was in hopes from the long knowledge his Excell$^{y}$ has had of me," he wrote at the same time to Alexander, " & in difficult times that he could not have entertained any Jealousies that I would willingly do anything to his prejudice. I still hope that upon his Excell$^{ys}$ deliberately reflecting on my past Conduct he will still Continue in the opinion that I cannot be guilty of anything ungratefull towards him. If my past conduct cannot clear me from any Jealousy of that kind I know not what can.

"I defy any man to shew that I have in any shape put any the least delay to the Granting of Lands surveyed as the only appearance of delay which I think can be pretended may be with regard to a patent of Lands in the Mohawks Country in which the mayor is concerned, I must beg your patience in being very particular on that head. The License of purchase requires that the lands be surveyed before the conveyance is

made from the Indians That the Boundaries as actually surveyed in presence of the Indians be inserted in the Deed that the Surveyor certify on the back that he had surveyed the land according to the boundaries inserted in the Deed and he and a Justice of Peace shall likewise certify that they saw the consideration money paid to the Indians. This has been the constant practice for fifteen years past as will appear by the purchases in the Secretaries office. In order to oblige the Mayor I gave a Deputation to one Bleeker at his desire to survey the land last fall though I had refused the like to others. When I was last at New York the Mayor brought me an Indian Purchase & a Survey made by Bleeker. The purchase was of Prior date to the Survey. The Boundaries . . . were not the same with the Survey nor could I from anything on the Deed know that the survey was of the same land. Neither was the endorsements by the Surveyor & Justice of Peace made as required by the Law. I told the Mayor that I thought that patent would not pass the Council . . . & advised him to send it back immediatly to have a new deed . . . made.

" When the Mayor came to my Lodgings Nicholas Bayard was with me to have my son to go & survey a purchase in the Mohawk Country. Mr. Bayard had wrote to my son to survey the lands in his Licence. My son in answer wrote to him that he heard that Theobald Yough & others had purchased the land . . . on which he said he would enter a caveat against granting that land & said some warm things. I did not let him know that the Mayor was concerned in that patent nor of any defects . . . but after he was gone, I informed the Mayor of what he had said & told him there was the more reason to have his patent made in proper form. In all this I think I acted a friendly part to the Mayor. I could not be certain that the land in which the Mayor is concerned is the same that Bayard has or intends to purchase nor could Bayard be certain

of it. I could not refuse to send my son to survey his patent without raising a clamour that must have been prejudicial to myself & could not have been of any service to the Mayor, but otherwise. . . . I told Coll Johnson," Colden went on to explain, "that if he would either buy or borrow or hire James Livingstons Quadrant I would carry it home & try it to know how far it may be depended on & instruct my son in the use of it. . . . This I told him last year & likewise when I was last at New York he may have some reasons for delaying the patent which he does not tell me but when I was last at New York he told me that he could not go on with the purchase at this time for that some of all the Five Nations must meet before he can make the purchase & be present at the Survey & that he did not know when he could have them to meet for that purpose the Lands on Susquehana River being in common among all the Nations.

"You know the one & only reason of M$^{r}$ Livingstons coming to my house. Coll Beekman never was at my house in his life that I remember neither have I seen him since some time last fall when he desired me to make a proposal to you relating to the lands in controversy between you and him. He came to my son's the day after I left my son's house on my way to New York the last time I was there. He was in such haste the sloop waiting for him that he did not enter the door but talkt to him . . . & went directly again on board. I have not by word message or letter directly or indirectly had any intercourse with any of the Faction unless M$^{r}$ Bayards coming to my Lodging be called such & which he did only because he imagined it to be in my power to favour him on which occasion he said some foolish fawning things which I told the Govr & some others as a jest & in the manner it deserved. I cannot avoid conversing with people without distinction on matters relating to my office & to my private affairs. The persons concerned with the Mayor in the purchase of the lands before mentioned

have distinguished themselves notoriously in the Faction at Albany as it is said his own Brothers have done. . . .

"His Excellency I believe is not well informed of the distinction of Granting of Lands to the persons who have purchased them from the Indians & Granting Lands that have been allready purchased & where the Grantee is freed from that charge. In the first case the purchaser having an equitable right to the King's grant."

When, moreover, according to Ayscough's promise, a full list of the patents was sent him Colden first pointed out that licenses to purchase were not sent to the surveyor general's office but delivered to the purchaser, the surveyor general knowing nothing of them until they were returned to the secretary (of the province), when a warrant of survey was issued, the purchaser later returning the completed survey to the same official as a preliminary to receiving his patent. Then, first stating that he had neglected no such warrant, he went through the list in detail, showing that the complainants had either obtained the warrant and then put off the survey, with the surveyor ready and willing to make it, or they had not even applied for a warrant; or, and this included the majority, they had neglected to return the finished survey to the office. Even after this apparently candid statement, it was only after the expenditure of much ingenuity on the part of Dr. Ayscough and Mr. Alexander that Clinton was brought to realize that Colden had treated him ill neither in this nor in other respects. And even then his mind, having once taken a suspicious turn, was inclined to take it again as soon as the friendly pressure of the two conspirators was removed. Besides, he was getting anxious to become a landowner of some significance before he returned to England, and it was not long before he was feeling his way to this end. "Mrs. Clinton and myself," he wrote Colden on July 28, 1752, "having been often asked by our

Friends, if we had not taken up Lands for Ourselves and Children, our answer was, that as we were going home so soon, we did not think it worth our whiles, and in short, did not know in what method to do it, for want of proper Information, and that very few Lands had been granted till lately. But as (contrary to my Inclinations and Expectations) I find that I am to remain in the Province, God knows how long, I cant but think it incumbent upon me for the sake of my Family, to do what I can for them; and being informed that one Fourth of all Lands patented, are vested in the Crown & set apart for the use of the King, and consequently for myself, which was done, I believe, by your Regulation for the Benefit of Governours, and as the Purchas and Survey are paid for by the Petitioners, I must think I have a just Right of such a Fourth, to take out Patents for the same for my Family & Friends, I shall be much obliged to you to put me into a Method how to do it; As I have been so often pressed to it by friends to take up a Fourth of all future Patents, granted while I stay on the Spot. I must rely on your Friendship, that in all Returns of Survey to come you will do the King justice by impartially dividing the Lands, so that his Majesty's fourth may be as good as any of the other three parts, and when so divided, I cannot but think it just that Lots may be drawn for the Fourth."

But whether Colden did his best for him or not, Clinton continued to feel somewhat sore. "His Excellency being up to the Elbows in pen, Ink & Paper has not time to write himself by this opportunity, but orders me to acquaint you, that in pursuance of your Letter to him, sometime before he fixed for his Departure, wherein you desire to purchase his land in Danbury Township, patented in my Name, for which you offered him £400, (and) he said he would accept of your proposal, But your Silence on that head when down here, makes him think you had dropt your design, or forgot it, as well as he had to

mention it to you. But as there is now application made for it, he desires your Answer on that head as he will do nothing in it till he hears your Determination."

This letter, as it happened, was dated November instead of September and was unsigned, points to which Colden promptly called attention, and which Ayscough as promptly acknowledged. "I very well remember your telling me," the latter went on, "that a part of the Tract of Land, patented in my name and conveyed to his Excellency from me, would be of great Service to you, as you had a Lot directly opposite to his, on the other side of a Brook or River, and where, as you told me, some of your Tenants had settled, (tho' on his Excellencys Land), as I have seen in a Draught of both Patents, and if I rightly remember, you told me, you made no Doubt, but the Governour would let you have the Land, as it would be of a very great Convenience to your Tenants and Service to you, the Stream being very proper for a Mill, this I acquainted his Excellency with, as you desired me. But really I cannot charge my Memory at this time with his Answer, if he gave me any, neither did I know anything of your proposal till he told me the morning I wrote to you by his Order upon it.

"I carried your Letter to his Excellency, & he tells me, that . . . he imagined it would be of more value to you than another, for which reason only he would accept of your offer of £400 preferable to any Application notwithstanding that part of the Patent, which you say, you would still gladly have a hundred Acres of, his Excellency says might probably be equivalent to the whole in Value, yet his Excellency orders me to acquaint [you] that he will accept of your first Proposalls, as the thing may be of Benifit to you, and compensate for the Expence you was at in Surveying it; He would be glad to hear from you on this Head, as he would also upon what you and he talked of, when you was here last, on which he was in expectation to have had your Senti-

ments before now." To this Colden replied by writing to Clinton himself as follows: "There are some things in a letter which I received by Mr. Harrison from Mr. Ascough which I think necessary to be answered and which I hope your Excellency will think cannot be properly done otherwise than directly to yourself. From the letter it is evident that he & perhaps your Excellency thinks that I intended to deceive your Excellency in desiring to purchase only that part of the land granted to Dr Ascough which is adjoining to a lot of land which I have there. One hundred acres adjoining to mine by his Account being more valuable than all the remainder. This has made me resolve to purchase neither the whole nor any part of that land & in this I believe your Excellency thinks I do you no injury by the manner in which it is continued to be offered to me for the sum your Excel[ly] was pleased to agree to accept from me last summer. But at the same time I absolutely deny that I ever told Dr Ayscough that there was a Stream of Water convenient for a Mill adjoining to my Lot, Because to my knowledge it is not true. The place for a mill is on Croton's River & Croton's River runs through my land but The place for a Mill is a Mile to the Southward of any part of my land. And the meadow grounds on Croton's River which I suppose Dr Ayscough means are not opposite to my Lot but to a Lot belonging to Mr Smith which adjoins mine to the Southward & these meadow grounds however are nothing of the value which the Dr seems to put on them. The Doctor has information of the land & I shall say nothing further in contradiction to what others may say The truth can easily be proved by ocular Demonstration on the Spot. If I had only a view to serve myself I could have taken a patent on anothers name for the same land without your Excellency's knowing anything of it as others have don. My intention was to serve your Excellency in it & your Excellency will never in

truth discover that I ever intended anything to the contrary in order to serve myself. I have before this observed a Design somewhere to give your Excellency a prejudice against me. I cannot remove it without knowing the grounds of it. Others may be more successful but none can be more faithfull than I have been. The Dr tells me that your Excellency expects to hear from me on what your Excellency talkt to me when last at New York. Whatever it be it has entirely escaped my memory & therefore must beg a renewal of your Commands on that head."

Satisfied or not, the time had come for Clinton to give place to another, who of his own free will and at once gave place in turn to James Delancey. This was a great disappointment for Colden. Sometime before the arrival of the new governor he had written to the ministry for an increase in his salary as surveyor general, and although Halifax replied through Clinton that Horace Walpole, the auditor general, declared Colden's salary to be large enough; and although later he wrote to Colden himself that the income of the New York establishment was less than its expenditure; Colden chose to consider his somewhat vague praises an earnest of future importance.[1] The blighting of his political prospects, however, was followed by a dead silence on the part of his correspondent, and when his friend Collinson obtained a personal interview, he was told that Walpole had now told Halifax that Mr. Pelham's death had put Newcastle in charge of such matters and had made the desired increase extremely problematical.[2]

Now more than ever glad that his commission was secure, Colden could not but regret that he would be even less likely to influence legislation for the correction of the abuses with which his work continually brought him in contact than he had been

[1] Written May 17, 1753, though it did not reach New York until September.

[2] From Collinson, July 30, 1754.

in the past. With the French marching onward almost hour by hour, the man who had studied their claims with enthusiasm, and who, in all probability, knew more of the geography of the country than any other, was destined to be of importance. At the same time, it was a secondary importance; he was to be little more than a book of reference, and Colden did not relish the prospect. He longed to be a constructive statesman, and in order to show what he could do had he the chance, and be ready for emergencies, he, about this time, when the interest of thoughtful men the colonies over was turned toward the Albany congress, sketched a plan of colonial government of his own, in which a landed and exclusive aristocracy was a chief feature. The colonies, however, were entering on a period rather concrete than abstract, and for the next seven years there was little time for theorizing on the relations between colony and colony or colony and crown. In New York, in particular, the last French war, with its stirring of racial impulses; the struggle for the boundary she had long considered her own with its accompaniments of what amounted to border warfare; the controversy as to the government of the new college with its tightening of religious prejudices, — all served to distract attention from the real issue. Yet these events were constantly affecting it in one way or another. If the war emphasized the essential unity of Englishmen, it also showed the colonists how possible it was to work together effectively; if the establishment of King's College proved the presence of many to whom English methods and traditions were dear, it also proved them to be far in the minority; and if the boundary disputes made neighbours enemies, it also showed them the necessity of a government that could assist them in their difficulties. The war also, of course, put a stop to the task of the surveyor. But Colden did not know the meaning of relaxation or indifference, and, though his relations with the head of the government forbade

any but the most casual attendance on the council, he kept a watchful eye on its activities, and by letters of suggestion and advice contributed materially to the protection of the frontier, while he scanned the uncertain proceedings on the New Jersey, the New Hampshire, and the Massachusetts lines, seeing one day undo the work of the preceding, with unabated interest. Indeed, he himself served at one time as a commissioner on the boundary between New York and Massachusetts. Thus the summons of 1760 found him mentally so alive to the situation that he was enabled to bridge with considerable ease the passage from leisurely experiment and speculation to political activity of a controversial sort.

His interest in land was now twofold, and one of his first letters home in his new official capacity urged a fund for purchasing land from the Indians for the king's use, and in his name, in order to prevent the abuses almost inseparably connected with private purchase. These had become more noticeable of late, because the most recent instructions had dropped the clause requiring the presence of the surveyor general wherever boundaries were run, and had, by implication at least, given permission to the governor to employ any surveyor he liked, a permission that had been well taken. Yet there had never been more need of care. The first turn in the tide of war had been made use of by Lieutenant-Governor Delancey, and, in 1759, he had issued a proclamation offering special inducements to officers of volunteers and regulars to settle in the region east of Lake Champlain. His offer was accepted with considerable promptness, and just before and just after Colden's arrival in New York, a large number of petitions for the purchase of land were presented to the council. Colden, however, though long in favour of peopling the frontiers, thought this movement a trifle premature. He preferred to wait until the bounds of the colony had been defined by the actual articles of peace, inti-

mated that the petitions of Captain Skene and six provincial colonels, each of whom wanted a township, should be run as usual by crown officers; and, when he was confirmed in his opinion by receiving a petition from several officers of the provincial forces for land which he found included within the bounds mentioned by the captain, put a prompt stop to all proceedings in regard to the matter, while he waited for instructions from home. There was land enough and to spare, and it was absurd to confuse matters hopelessly when there was no necessity for it.

This was especially true because there was a great deal of necessary confusion. Although, in conformity with the claims of the conquered Dutch, the grant to the Duke of York had explicitly made the Connecticut River New York's eastern boundary; although the final settlement with Connecticut had been founded on this provision; although the Massachusetts charter, or the charter on which it was based, only extended the western bounds of that colony so far as they could go without clashing with the claims of other Christians; the Massachusetts people had never accepted this limitation, and New Hampshire, being empowered by its charter to extend as far westward as Connecticut and Massachusetts, had to a degree followed her lead. In 1749, however, the governor of New Hampshire, Benning Wentworth, wrote Clinton that as he was about to make some grants west of the Connecticut, he wished to know how far north and east New York extended. At the same time he offered certain reasons for his belief in his jurisdiction beyond the river, and the next year, in acknowledging Clinton's communication of a minute of council declaring the New York position, stated that he had already issued letters patent for the town of Bennington, twenty-four miles east of Albany. Clinton replied that this land had already been granted by New York, and he added that he was greatly surprised at

Wentworth's hurry under the circumstances. Wentworth then proposed a reference of the whole matter to England, in accepting which proposition, Clinton proposed in turn that they exchange their statements before submitting them. Wentworth announced himself quite willing to do so, and New York proceeded to give the reasons for her conviction in the form of a report of a committee of council, reënforced by some observations of Colden's, proving that Massachusetts, and consequently New Hampshire, had no legal claim west of the Connecticut. Meanwhile, notwithstanding his promises or the explanations already made him, Wentworth had written to the Board of Trade, reverting to his original argument and claiming for his province a western line running twenty miles east of the Hudson, which letter, sent to Clinton by the Board of Trade, was his first intimation of Wentworth's readiness to report and was pronounced "extraordinary," by the council, who again refuted the New Hampshire governor's premises.

Nevertheless, nothing further had been done when Colden returned to the city of New York in 1760. Instead, he found the situation complicated by the preëmption of a vast tract of land east of the Hudson and south of Crown Point by the famous John Henry Lydius and a number of New Englanders, a tract that included Fort Edward and several regularly granted patents and amounted in all to more than a million acres. Lydius based his claim on an Indian deed, signed by several Iroquois, and dated 1732; but it had been confirmed by a grant by the governor of Massachusetts, supposed to be dated 1744, and repeating an order from the king to Shirley to examine it, and, if he found it to be *bona fide*, to grant it. But, if Massachusetts had anything to say about it at all, the grant should have been made by her General Court. Yet Lydius had persisted and, by his own confession, had granted portions of his claim to more than seven hundred individuals, who declared themselves

ready to defy the officers of the law by force. Lydius himself was now in jail under prosecution, but there was no money with which to prosecute him, and Colden, realizing that proceedings of like character would be more instead of less frequent unless something was done, issued a proclamation declaring the Connecticut to be New York's eastern boundary. At the same time he described the situation to his ministerial correspondents, urging, in general, the establishment of a contingent fund for just such cases and, in particular, the declaration of his Majesty's pleasure in regard to the New Hampshire line. In fact, this was all that was necessary, as the right both to the soil and that to jurisdiction lay immediately in the crown. Then pointing out the limitation of New York's commerce that would ensue if New Hampshire came out victorious, as well as the inconvenience of making Portsmouth the capital for so large a district, he called attention to certain features of the case with Massachusetts. It was evident that her repeated and capricious objections to the attempts made to effect a decision must have a reason, and Colden suggested that this might spring from a hope of forcing the king to her wishes, the public opinion of a charter government, where every man felt himself interested, supporting the delay. As usual, he had remedies to offer. There might be a special commission appointed by the crown, but this was expensive and the assembly would be unwilling to give unlimited credit; or writs of intrusions returnable in the New York courts might be issued by order of the governor. These could be accompanied by directions to Massachusetts to plead to such jurisdiction, and that would bring the case to England where it could best be decided, as the whole issue depended upon the construction of the Massachusetts charter.

About this time Colden also reached other conclusions in regard to the general question. Amherst's brilliant success at

Fort Levis in 1760 had been followed at his suggestion by a proclamation urging the return of the settlers who had been driven by the war from their outlying farms, as well as the coming of others, the advantages of the fertile fields on either side of the Mohawk being especially emphasized. But according to the instructions the patentees were effectually to improve within three years a certain quantity of their land—the amount to be determined by the council—or forfeit the grant. By the instructions also, on the same penalty, a patentee must leave untouched all pines fit for masts. This might mean in certain cases that he could not clear his land or build his house or his barn or, if he lived on the water, his boat; while his farm was probably so far from New York or Albany that the British navy or merchant marine would reap little profit from his trees. So he might forfeit his grant either way. From such prohibitions the inhabitants of the charter governments to the east were free, and it behooved all to consider what they promised. Indeed, the council were debating the question at that moment.

Difficulties had also sprung up with Sir William Johnson,[1] who, early in the spring of 1761, had obtained a large tract of land north of the Mohawk by deed of gift from the Indians. Unfortunately, Colonel Delancey and others had shortly before obtained a license to purchase the same tract and, mindful of the rule forbidding the acceptance of lands from the Indians by purchase or otherwise, without a license, Colden tried to bring about a compromise. But, though he told Johnson that he wished him well and expressed his sorrow at not being able to oblige him, the fact remained that he did not present his case to the council, and Johnson was correspondingly indignant. It was, therefore, with pleasure that he informed Colden that the Indians had determined to sell no more of their lands, and

[1] Colden Letter Books, I, 87, 93–97, and 130–131.

that a large tract east of "the waters," which the council were about to grant to some "reduced officers," belonged to the Mohawks, a fact which Colden doubted, as the tract lay in what once had been the Dellius patent. Colden's candid letters, however, seem finally to have soothed Sir William. The furtherance of a greater or lesser number of grants, the lieutenant-governor protested, had little personal interest for him, for, passed they never so quickly, he would hardly be on hand to reap the advantage. But perhaps what won the old colonel's heart was Colden's determination that, whatever happened, the Indians should not suffer while he was in authority. Indeed, he was so anxious they should be reassured that he wrote begging Johnson to call to their minds what he had done for them thirty years before.[1] This was in connection with a land fraud at Canajoharie, which Johnson was investigating, though not very systematically. He had laid the case before the council without affidavits, owing to which circumstance, as Colden wrote him, they could not do a thing, though they appeared sympathetic. Colden therefore advised him to go back to the frauds in the original purchase, of which he believed David Schuyler and his son could tell him much, and to get a complaint in writing from the Indians, for whose temporary relief he himself would work in the meanwhile.

In all this, it is true, Colden had been acting as governor rather than as surveyor general, though he retained the second office until the early part of 1763, when he resigned in favour of his son. Still, so entirely was his policy in these matters governed by his knowledge, and so entirely had he attained his knowledge from his past experience, that it is impossible not to consider this particular phase of his stewardship a natural culmination of his former occupation. He was now, as lieutenant-governor, called upon to deal with a successor of the

[1] Colden Letter Books, I, 70–71.

measure he had fought so long before. Another act for the partition of lands in common now made its appearance, and so vehement were its sponsors that Colden did not dare refuse it his countenance, though he sent it to England by the first ship after its passage, in order, if possible, to get the royal disapproval before it went into execution. Neither Governor Hardy nor Governor Monckton had complied with their instructions calling for a determined attempt to break the huge grants still existing, and indeed it would have cost them dear to do so. A great interest would have attacked them and they had no contingent fund for the actual expense involved. Moreover, though the attorney generals of New York had formerly been lawyers of repute, for more than thirty years their ability had been such that private citizens had refused to intrust them with their affairs. It was only the king and his governors who were forced to employ them. Colden therefore got a clause inserted in the act requiring that the bounds of every tract be run by the surveyor general, when, if they were found to encroach on the king's lands, writs of intrusion would prove equally effective and far less liable to arouse general opposition than an attempt to break a grant for some legal defect. At that very time, for instance, as he enclosed a map to show, there was a dispute of this sort before the council between Van Rensselaer of the Manor and several others who had petitioned for land within his claim but not within his actual grant, and the question was; Should their petition be refused when they were willing to pay for and defend their purchase?[1]

But Colden was to have worse to bear than impersonal matters such as these. Late in the year 1761, just when he had promised himself the pleasure of presenting to the ministry with some authority his plans for the settlement of the country, the Board of Trade memorialized the king to the effect that the

[1] Colden Letter Books, I, 155–158.

lieutenant-governor and the council of New York had been pushing the granting of lands more for their own benefit than for that of the people in general. At the same time they notified Colden of what they had done,[1] touching him to the quick and bringing forth a vehement denial. He solemnly declared his absolute lack of interest in any Indian purchase, any license to purchase any grant of land, and promised a particular answer to particular instances. As to his family, a man with grown-up grandchildren might be supposed to be free from responsibility for their purchases, but even here he did not know of a single investment since his administration began. If, moreover, he and the council had made the conditions of the grants somewhat easy, it was for a very good reason. Amherst's proclamation had given rise to a number of licenses to purchase land on the frontiers. For this purpose it was necessary to get the whole tribe owning it together, and as this was a difficult and expensive proceeding, it became customary for the prospective patentees to lump their purchases, the rich speculator advancing money for the expenses of the poor settler. The latter, with his interest to pay, could not then hope to meet the exact requirements of the instructions, but Colden affirmed that as yet he had had to do with but two actual grants, one of twenty thousand acres, which had not passed the seals, and another of small extent and granted before Colden had received an additional instruction effectually prohibiting the purchase of land from the Indians. It must have been hard for a man to be accused of the very thing he had so long hunted down in others, but Colden was elastic and was soon declaiming against land greediness as before. "We have a Set of Lawyers in this Province as Insolent, Petulant, and at the same time as well skilled in all the Chicanerie of the Law as is perhaps to be found any where else,"[2] he was soon writing in discussing

[1] *Ibid.*, 176–184.

[2] Colden Letter Books, I, 231.

the difficulty of annulling the over-large grants, once they were made.

Meanwhile Governor Monckton[1] had come and gone, leaving behind a representation made to him by five members of council in regard to New York's disputed boundaries. This Colden found, and fearing that Monckton would present its contents verbally to the authorities at home, he at once set himself to correct its mistakes. These had to do entirely with the eastern boundary, which these gentlemen ventured to consider should have been fixed, as in the case of Connecticut, by the royal commission of 1664, which had determined the boundary between New York and Massachusetts to be a line twenty miles distant from, and parallel to, the east bank of the Hudson. To this Colden objected; first, because no one had mentioned such a provision for nearly a hundred years, which was odd considering Massachusetts' desire to make the best claim possible; and in the second place, he asserted, the agreement with Connecticut could not be claimed as a parallel case because that had been based on equity, her principal towns having been settled west of her namesake river when the Duke of York received his patent, whereas Massachusetts had at that time not once crossed it. Besides, the Massachusetts charter had been annulled in 1685 by a decree in Chancery that had never been reversed, and this fact, despite a second charter granted later, absolutely negatived any claim prior to the duke's patent, which was clear and distinct. Moreover, this second charter decreed that Massachusetts should extend only as far west as Connecticut, rather ambiguous phrasing that must in all common sense be considered to mean the river and not the colony. Indeed, the only possible argument against this boundary was the suffering it might cause the actual settlers, and even this was unnecessary when it could be arranged that they retain their possessions under the jurisdiction of New York.[2] All

[1] See "A Colonial Executive." [2] Colden Letter Books, I, 232–246.

these considerations, of course, applied with double force to New Hampshire, whose governor, it was discovered about this time, had lately granted more than thirty, some said one hundred and fifty, townships west of the Connecticut, and had granted them so light-heartedly that they were actually being offered for sale in New York and New Jersey by a man "in appearance no better than a Pedlar," the grantees or their employee counting on the lower New Hampshire quit-rent as an inducement to buyers. This was obvious proof that the grantees were pure speculators, and that Wentworth had deliberately schemed to establish the nine points of the law ascribed to actual possession. The New York council, who, apparently in good faith, were playing into his hands, could not have understood the situation at all, for they proposed to save only those New York grants that extended more than twenty miles east of the Hudson and that had been made since the issue of the second Massachusetts charter; whereas, Colden said, it was very clear that the second charter could not have extended beyond the river, though the first very possibly might. On the whole, he could not conceive on what principles of "Justice, Policy, or Publick Utility" the councillors had advised such a curtailment of the crown's future income. The council, however, were as heartily in favour of the vigorous prosecution of Lydius and other intruders as Colden himself, and urged a fund for this purpose.

Another difficulty in this connection was the fact that on a royal proclamation promising an allotment of land to reduced officers, both regulars and provincials, many had applied directly to England for their share. Here they counted on the influence of Sir Jeffrey Amherst, under whose special protection they considered themselves, and who had been greatly interested in establishing the army in the walks of peace. In fact, at one time it had been common talk among his brother officers stationed in America that he was going to set up a separate

government in the Champlain region, although the only foundation for their belief seems to have been that he was pushing its settlement and had started to build a large fort in the neighbourhood. But the final cession of Canada put an end to this scheme, if he ever entertained it, and Colden was left to face the difficulty of putting off demands for patents inspired by the proclamation until he could find whether they conflicted with grants made in response to demands of a like nature in England. Judging from the data he possessed, these grants clearly went as far west as Fort Edward, so he determined to make no more east of the lakes until he heard from home. But the English grantees wanted something more than this. For instance, Philip Skene, the major of a brigade, who had early obtained a generous portion and then gone to Martinique without giving it any attention, now asked its confirmation by the council of New York, basing his claim on a copy of the petition he had sent to England. Colden told him that, according to the instructions, he could not grant so much to one man nor could he grant any tract bounded so vaguely and of such indefinite extent. He therefore advised him to apply for a grant of his improved lands after a previous survey, offering to facilitate the proceedings and promising not knowingly to grant his lands to others.[1] But Skene hung around town three months longer without complying with this good advice and then went to England. Meanwhile the council had considered his request for a grant on his petition, and finding that it included a tract already granted by Colden, as well as two others granted by Monckton on their own advice, and that all these tracts were granted on original surveys, had decided that his pretensions were not valid. Still, as he said that some of his improved land was included in one of these grants, Colden urged the council to except them. But they refused unless the patentees were willing and unless they

[1] Colden Letter Books, I, 225–226.

could have an equivalent cut from adjacent lands.[1] The truth was they were less impressed by Skene's account of his expenses than by his spasmodic interest in his possessions, though they offered to grant him twenty-five thousand acres in another place. Colden could but think this fair and told the government so, while he vigorously presented the case of the reduced officers whose grants must wait until the major's claims should be satisfactorily adjusted.

In truth, if Colden had had no other complications to deal with, his connection with the land system would have distracted his administration to a sufficient extent. Despite his long-sustained determination that the Indians should be treated fairly so far as their rights to the soil went, and his constant watchfulness to that end, it was a popular theory that the Indian outbreak of 1763 sprang from the indignation of certain New York tribes at the perpetration of some land frauds; despite his many letters on the subject, he felt that the ministry did not understand the boundary question rightly, because Mr. Charles, the assembly agent on the spot, and likely, according to Colden, to push the claims of republican governments, had the better audience, a consideration he did not fail to mention to the ministers themselves; and despite the best intentions in the world he found it impossible to please every one in dealing with the private claims he was constantly called upon to satisfy. In managing such affairs, nevertheless, he was extraordinarily impartial, and in all his letters it is impossible to find a suggestion of self-seeking or a hint even of a *quid pro quo.* Occasionally, he would display a mild sort of favouritism toward a friend, as when, for instance, he promised Sir William Johnson, for a relative of his, that he would draw up a petition for a certain patent, and, as the land between Fort Edward and Lake George was now fully taken up, would date it a few days earlier in the

[1] *Ibid.*, 345.

month so that officers applying for it in the meantime could be refused. He suggested also that, pending the issue of the patent, the land be run round by a surveyor before a number of Indians, so that at the time of purchase the survey could be said to be made in their presence and with their consent. If, moreover, the council refused the grant, he promised to undertake to get it in England with the aid of the patentee's friends, a somewhat inconsistent proceeding, while he cheerfully promised to undertake the journey made necessary by the new royal regulation, requiring the governor to purchase all lands from the Indians in person. Again, doubting the good humour of the council, he urged Johnson himself to obtain his Majesty's order for the lands he wished, thus being enabled to hold them in his own name and, probably, free of quit-rents for ten years like the grants of the reduced officers; while at another time he suggested that, as the king was resolved not to grant twenty thousand acres to one person, he might, if his tract was more, think of some other name for part of it, according to the method of some of the great men in England. But these very slight departures from the strict letter of the law in the cause of friendship are really but proofs of his clean administration, and, if he did not use as much ingenuity for the benefit of the casual patentee, he devoted himself with energy to his satisfaction.

Yet it must have been irritating business. One day General Gage, now the commander-in-chief of the American army, would write proposing that in granting lands to the reduced officers Colden would do so on the proviso that the Crown Point and Ticonderoga garrisons have the perpetual privilege of cutting down what trees might be necessary to supply them with wood. But it practically would never be necessary to touch the trees on these tracts, when acres of woodland unfit for cultivation were likely to remain ungranted for generations on the borders of the lake. Then Skene, who, as has been said,

had received a grant of 25,000 acres from the council, came back from England with an order from the king for 20,000, obviously having said nothing of the former grant. Again, Colden heard that Lieutenant Donald Campbell, son of that Laughlin Campbell who had indirectly given him much annoyance some years before, had a similar grant for 30,000 acres, though he had himself given him 10,000 acres before he left for England as well as the 2000 to which he was entitled as a reduced officer. Hence he concluded that he had received the additional grant under false pretenses, backed, probably, by the libels in Smith's history and by Smith himself, who, as Campbell's agent, had dragged the old-time differences into another generation.[1] Colden had taken far more pleasure in granting 47,500 acres to Campbell's deluded followers.[2] Next, Governor Wentworth wrote asking for the release of four New Hampshire men who had been arrested by the sheriff of Albany. Considering that Colden had, on December 28, 1763, issued a proclamation requiring all judges, justices, and other civil officers within the limits contested by New Hampshire, to continue to exercise jurisdiction to the banks of the Connecticut, and enjoining the high sheriff of Albany County to return the names of all holding under New Hampshire west of the river; considering that the arrested men had actually dispossessed three New York landholders; and considering also that two of these had occupied the land more than thirty years, except when Indian incursions had forced a temporary absence, and that all three held under a grant of 1683, a date early enough in itself to answer New Hampshire's claim, this was an unreasonable request. Colden, therefore, upheld by his council, refused it.[3] Still again, came an order from England, directing that no more grants be made on the east side of the "waters,"[4] because, it

[1] See "A Colonial Politician," p. 128.
[2] Colden Letter Books, I, 346.
[3] Colden Letter Books, I, 358.
[4] Lakes Champlain and George.

was suddenly feared, they might conflict with certain "concessions" made at the surrender of Canada to M. Michel Chartier de Lotbinière. It was in this region that New York surveyors had spent a busy summer laying out lands for reduced officers whose patents would have soon passed the seals; it was here that they had discovered many indications that New Hampshire, having passed over a fair and unsettled territory, had been surveying just before them; it was here that the most considerable pass between the king's old and new subjects lay; and Colden, with as much indignation as he ever permitted himself to show when writing to his superiors, asked whether it was better that French, rather than English, officers should block the way; while he "suspected" that the old soldiers would with justice "clamour loudly," [1] when they learned of their delayed satisfaction.

It was about this time also that Colden was keenly hurt by a royal proclamation requiring all officers, on pain of removal or prosecution, to receive or demand for their services only those fees established by proper authority.[2] This was followed by a demand for a record of the land grants, and, despite the extra expense and time, not to speak of the labour, involved, with no hope of adequate return, work on the latter was begun at once, while Colden ordered all administrative and judicial officers to report fully on the fees taken in their respective offices, giving their authority for the amount. When these had all come in he wrote to the Board of Trade inclosing them and freeing his mind of certain reflections.[3] The request had been general, but significant emphasis had been laid on fees received by the governor for land, and it was with special interest he considered these and the fees of the surveyor general. When, as a young man, he had first become so unexpectedly

[1] Colden's Letter Books, I, 366.

[2] *Ibid.*, 343.

[3] *Ibid.*, 340–343 and 348; also 386–390.

interested in the subject, there had not been a single map or a single register of survey in the office. It was hence impossible to make a complete rent roll, and, as he had no salary but his fees, he could only try to clear up the situation for himself as he went along. Then came Burnet with his generous enthusiasm, and Colden was soon happy with a salary given him for this purpose out of the quit-rents. He at once commenced with all the energy he could spare to make extracts of the grants in the secretary's office, but before he had gone farther than the year 1707, one of the big proprietors, scenting danger, had given the auditor general information of what was going on. The result was an instruction forbidding the governor to use the quit-rents for any purpose whatever. Since that time he as surveyor general had been entirely without salary, and his experience had been such that, as he had already said, he would gladly resign his fees for almost any settled amount. Again, as acting governor, he had taken the usual fees, or rather, half of them; but surely no one could consider 25*s.* per thousand acres exorbitant when he remembered, first, the size of the average patent, and, second, that this fee included the license to purchase, the warrant for the survey, the inspection of the return, the signing of the preliminary certificate, and the warrant to the attorney general to draw up letters patent. Besides, if the patent failed before actually coming to the seals, the governor got nothing at all. There remained another point to be answered, and, shortly afterward, without waiting for the secretary to get at them in order, Colden sent an abstract of the grants in his own administration, in order to refute the charge that his own family had come in for a lion's share.[1] By this abstract, it appeared that out of thirty children and grandchildren only three had received grants from him, and these had been grants of land long since bought of the Indians. It was true that the

[1] Colden Letter Books, I, 401.

grants of his administration were more in number than usual, but many were for lands bought and petitioned for in Delancey's day, the petitioners having been deterred from completing the necessary steps, first, by the bad temper of the Indians preceding the war and then by the war itself. Indeed, out of fifty-five grants but thirteen had originated in his administration, the twenty-four already issued to reduced officers and the great number in preparation for the same class of recipients being the result of proclamations with which he had really had nothing to do.

But while he considered his own record clear in relation to the king's lands, he became daily more convinced that the abuses connected therewith were responsible for political and social conditions in the colony. The assembly had just created a stir by an address disputing, in a fashion that was spirited to say the least, the mere suggestion of the right of Parliament to tax the colonies, and Colden affirmed that their attitude was directly due to the great provincial landlords. Three of these still claimed about a million acres each, and several about two hundred thousand, yet all this land had been granted without previous survey, and their claims were based on patents containing no mention of the quantity of land granted. Moreover, these patents paid a diminutive quit-rent; the greatest part of them was still unsurveyed, and uncertainty kept smaller settlers from their neighbourhood. The proprietors of three of these patents were practically hereditary members of assembly. Their manors carried the privilege of a representative, while the influence of the remaining great patentees in their several counties sent them to the capital again and again. It was, of course, to their interest to have things remain as they were. They paid small quit-rents, or taxes, or none at all, while the small farmer, with his cultivated fields, was rated according to every "horse, cow, ox, hog," and every acre of land he possessed. But,

according to Colden, the taxation proposed by Great Britain would divide the burden far more easily, and the big holders, dreading this, had issued their propaganda of liberty and privilege to blind their poor dupes to their real interests.[1] For this reason, too, he saw in their opposition to appeals a guilty knowledge of the results, should some of the suits in which they and their lands were concerned be brought before king and council, where, instead of being the judges and lawyers themselves, or closely connected with those that were, they would be treated no better than any other freeman. For this reason, he sincerely believed that appeals were the sole security of the people against the lawyers, some of which profession were always on hand to buy up every disputed title.

Interesting object lessons and convenient examples of this solidarity of the legal fraternity and their rich patrons were always ready. In 1764, for instance, a number of poor industrious farmers, paying the required quit-rents on their lands, petitioned Colden for the king's help in the defence of their titles against the proprietors of Minnisink and Wawayanda. Colden, as was to be expected, took up their cause vigorously. It was their labour, he said, that had made the country a place to live in and of use to the province at large; they had defended it against the savage; and now, when there was peace at last, they were in danger of losing their reward. He was therefore eager that their grasping neighbours be prosecuted by the attorney general on the score that their patents were not valid, but he humbly submitted the propriety of his judgment to those who were "skilled in the law."[2] He was fighting more vigorously still the patent of Kayaderosseres[3] in the Mohawk Valley. This patent was derived from a deed made by three Indians, but only two of them had executed it, and these were not parties to the deed; nor was their tribe mentioned, although, according

[1] Colden Letter Books, I, 361–364. [2] *Ibid.*, I, 402–404. [3] *Ibid.*, 392–394.

to Indian custom, the tribe alone owned, and could give or sell, land. But there were many other irregularities. The three Indians made good use of English miles when at that time, at any rate, they must have been ignorant of their length; the bounds were fixed in part by an unknown hill and river; and by the map in Colden's possession it was evident that the land claimed could not by any construction be contained within the description of the land sold by the patentees, which formed but a small part of the whole. Besides, there were no settlements or improvements on it whatever, and although the grant was made unconditionally, Colden thought them a tacit condition of all grants. Still another factor in the situation was the feeling of the Indians themselves, who refused to recognize the deed at all. Yet when Colden's efforts at last brought an order from the Board of Trade directing him to get the patent annulled, and he had accordingly sent a message to the assembly, they refused his request. This he had expected; but when they added a proposition that Johnson use his influence to reconcile the Indians, he was indignant. "This is another low insinuation that the dissatisfaction of the Indians arises from you," he wrote Sir William. Johnson, however, felt under no obligation to follow the council's suggestion, and, truly alarmed at the reported excitement of the Indians over some settlements begun on the patent, they advised Colden to issue a writ of *scire facias* against the patentees. "You can tell the Indians," wrote Colden himself, "that both you and I have done all in our power and that justice will be done but tell them that even the King cannot do justice to himself or to his most beloved subjects except through the courts, which is a slow but effectual and certain method. If I was one of them, and I was adopted by the Canajoharies many years since, I could not do more than I have done for their rights but I never was able to do so much as now."

Colden was of the opinion that once in the courts the case would drag on for years. But he was to hear more of the many-syllabled patent before as many months. Late in 1764, a Mr. O'Brien, whose wife was a cousin of the Foxes and the life-long intimate of the celebrated Lady Sarah Lennox, came over to New York with Lady Susan, in order to find a suitable location for a grant of 100,000 acres given by the king to Lord Holland, the Earl of Ilchester, a Mr. Upton, and himself. Colden, according to directions which he had received, introduced them to the surveyor general, and all four agreed apparently that the best place for it was on the east of " the waters," provided the French concessions did not interfere and always excepting Kayaderosseres. If that patent should be vacated, Mr. O'Brien was told, it would be still better. For this reason, and because he was being "greatly tized" by the still waiting reduced officers, Colden earnestly begged some decision on Chartrier's claims. Mr. O'Brien, however, who had wanted his tract on the Mohawk until he had been told that was impossible, was really dissatisfied, and the next April Colden was greatly chagrined to receive a letter from the Earl of Hillsborough, Secretary of State,[1] accusing him of bad faith in the matter, a charge against which he hastened to defend himself. The cultivation of hemp, he declared, was the sole means by which such a large tract could be made to pay. He had therefore advised the grant of the only land fit for this purpose still remaining in the crown, with the exception of the new lands lately thrown open on the Connecticut. He had, besides, misunderstood Mr. O'Brien, thinking he had asked for already settled lands on the Mohawk near Canajoharie, whereas, it now seemed, he had wanted the land that had been given by the Indians to Sir William Johnson, but never confirmed by the crown, a tract extending from the river opposite Canajoharie Castle to Canada

[1] Colden Letter Books, II, 5–8.

Kill. He had himself, he went on, advised Johnson to apply directly to the king for his grant, but the Indian outbreak had prevented such an application until the previous autumn, when Colden had been particularly impressed with the necessity of a good map of the region, and he hoped to have one ready for the next packet. Such a map would, of course, illuminate the situation considerably, all of which, it must be confessed, was rather a neat bit of special pleading on the part of the much-disturbed lieutenant-governor, who had nevertheless been relieved to find "that soothing kind appellation of fellow servant in the latter part" of Hillsborough's letter.

But it was not pleading for himself. "Major Skene, who is lately return'd," he had written Johnson, "said the Board of Trade think it improper for you to take any Land by Gift from the Indians. Some who have obtain'd the King's Grants, in this Province have had their Eyes turn'd on your Patent, by some of your back friends," [1] and his "back friends" had so far been successful. The council also, to whom Colden had at last presented the case, had answered his expectations and refused confirmation of the gift because it was against the instructions to grant so much to any one man; because Johnson had received no license to purchase the land; and because several licenses of the sort had been granted for the region, though they had never been used. As usual, Colden was persistent and wrote home again. His Majesty had overstepped the limits for others, he said, and why not for a servant of Johnson's value, who had taken no advantage of the Indians, as he so easily might have done; who held only such lands as he had bought from settlers, and to whom the Indians had given this tract as a debt of gratitude. It had, however, cost him 1200 pieces of eight besides the survey. But before this letter had gone, owing to delay in the arrival of this survey,

[1] Colden Letter Books, I, 442.

which was to be used as evidence, Colden had learned that it was the very land that O'Brien wanted. The latter, however, had now gone with Lady Susan to visit Johnson himself, and Colden hoped much from their mutual explanations. "It will be impossible," he wrote Sir William, "for you to please both the Indians and the Patentees of the great Tracts. I believe not one of the great Tracts were fairly purchased. Those of them which are settled & where the Indians have long desisted from making any Claim, are very different from the others where no settlements are made and where the Indians have at all times asserted their right. In these cases there is no other Rule but to do justice to the Indians, & to dispise Calumny which no good man could ever avoid." [1]

Their lordships, it seems, also wanted some land between New York and Albany, but a possible vacancy in Claverack patent was the only one of which Colden knew. Here Van Rensselaer claimed 170,000 acres, on some of which several government officers had cast an envious eye four years before. Colden had allowed two or more of his children to join them, and the syndicate had petitioned the council for one thousand acres each. But the petition had been refused until Van Rensselaer's claim had been settled, and the same answer had been returned the preceding summer to certain reduced officers, tired of waiting for the Champlain grants, in whose behalf Colden had written the Board of Trade. These officers had suggested that Van Rensselaer's domain be cut down by 23,000 acres, and, according to the case drawn up by the attorney general, wrote Colden, this was only fair. For, while Van Rensselaer's patent gave the width of his purchase as twenty-four miles, it gave its limits as the Hudson and Waneamiaquasick, the latter being a well-known "Monument," or heap of stones, just nine and three-quarters miles

[1] *Ibid.*, II, 17–21.

from the river. Yet, he added, the men drawing it up, deceived as to the distance by the wild character of the country, covered with woods and swamps, with hills to climb and rivers to ford, might have made their error in all good faith. But the fact remained that both distance and limits could not stand, and it were better to retain the latter, as otherwise one long side of the patent would be left without bounds.[1]

One gratification the year had brought. The writs of intrusion that Colden had ordered filed against persons taking up land in Minnisink patent had had excellent effect, some proprietors submitting without even coming to court and praying regular grants at the usual quit-rents, "One instance of what may be done by vigorous measures," wrote Colden. Another thing he also succeeded in settling satisfactorily. Having received an order from the king to grant 100,000 acres to a Lieutenant James McDonald, he was checked in his natural procedure by the knowledge that John Morin Scott and Oliver Delancey, both members of council, had filed a caveat against the grant and that two-thirds of the council were interested in some measure in the case. Accordingly he asked the attorney general whether the king's order in council was under the control of the council of New York or whether the governor could make the grant alone.[2] Kempe, after an ambiguous answer and a second request, replied in the affirmative; Colden, after reading the caveat carefully, decided the land was in the crown; and the deputy-secretary was ordered to prepare letters patent accordingly.

Meanwhile the boundary question remained unchanged. Some time before Colden had sent Charles some heads of arguments on the subject, thus giving him, as he said, an opportunity of recommending himself to his Majesty's ministers as well as of serving New York; and whether from this or other

[1] Colden Letter Books, I, 377–378; II, 10, 11. [2] *Ibid.*, 24, 25.

reasons the king at length gave the subject the attention it deserved and, after several announcements of its coming, early in 1765 his order arrived, making the Connecticut River New York's eastern boundary. The same winter the New York assembly, on the recommendation of the Board of Trade, passed an act for commissioners to settle the affair with Massachusetts, and sent their acts to the sister colony asking her compliance. But nothing had been heard from her by the next July, when her governor wrote complaining of trespasses made by Livingston. "I cannot prevent any Man's taking what legal steps he thinks proper for securing his own Rights," wrote Colden, "and if illegal steps should be taken our Courts of justice are open for relief. However I shall do what is in my power to preserve the peace in that part of the country without any Byass in favour of Mr Livingston." But the events of the autumn of 1765 were of so exciting a nature that, for the moment at least, men's minds were distracted from personal concerns, save in so far as they were affected by what was going on around them. Land, which in New York might always have been spelled with a capital letter, had lost its fascination, and by the time effigies had ceased to swing from gibbets and the shouting of mobs to be a familiar sound, Colden was settled at his Flushing country-seat, and affairs of state were being managed by another imported Englishman. As usual, he wanted to make the best of a probably brief period of power, and when certain settlers in the contested territory, now declared on royal authority to be New York, applied according to Colden's invitation for free confirmation of the grants they had received from the governor of New Hampshire, he refused them without the usual fees. These were paid by one grantee at least, but many others appealed to the king, while there were still others who objected to being New York men at any price, and Colden had scarcely become established again in the governor's chair,

four years later, when a number of these, who had settled in Albany County between "the hight of Land usually called the Green Mountain" and the Hudson, and who had chosen magistrates, or "selectmen," in true New England fashion, offered armed resistance to the partition of the tract of land called Wallomscack and granted in 1739. The commissioners of the New York legislature produced their powers, the civil authorities threatened a posse, but the rioters said they could outnumber the posse and would defend their claims to the last drop of their blood. "The event might have been fatal," wrote Colden to the governor of New Hampshire, "had not the Commissioners apprehensive for the safety of their Persons declined the further execution of their office." "Proper measures are directed (by this government) to bring the offenders to Punishment," he added, "(and) In your Excellency's power it may be to convince these rash People of their Delusion, by making it public that they cannot expect your Countenance or Protection." Indirectly the Revolution had begun, and from this year 1769 until their feat at Ticonderoga, the "Green Mountain boys" gave Colden and, for a time, Tryon almost continual anxiety.

Nor were the old difficulties lessened. As late as June, 1774, Colden was writing to Dartmouth, then Secretary of State, concerning Colonel Skene's claims and quit-rents; at the same time he was worrying over certain new instructions which seemed to him calculated to cut out those still unsettled reduced officers; while even in 1775, though Johnson was dead, the Indians were still complaining through his son of the same tormentors and the same ill-treatment. But the end had come at last, confirming Colden's warnings and rendering all his plans and accomplishments of no account. The life-work of the administrators of an overthrown government is seldom a subject for enthusiasm and, however well done, must in the nature of the case be considered unsuccessful. No country

to-day points with pride at Colden as the first man to make a science of the care of its lands, yet the country whose beginnings he so heartily condemned might still learn something from this phase of the career of one who, without just accusation of hypocrisy, brought an atmosphere of high-mindedness into the execution of an office where graft was prevalent and who, in his treatment of a conquered race, left an example that has found few, if any, followers in high places.

# A COLONIAL POLITICIAN

## I

As every student of our early history knows, in those English colonies known as the "Royal Provinces," the officials next in rank to the governor were the members of his council. Their influence, indeed, might be greater than his own. It is true he had power to suspend them from the exercise of their functions, but his suspension had to be confirmed at home, and so short was his average stay that his successor would as likely as not be urging the restoration of the suspended councillor before the easy-going ministry had considered his own action. But unless he made himself extremely disagreeable, a councillor was usually a councillor for life. As such, he was at once a member of the upper house of the legislature and of the governor's privy council. As legislator, he could, with his fellows, originate, amend, and defeat legislation, while the advice and consent of the councillors were necessary to the greater part of the executive functions, — the issuing of proclamations, the granting of lands, the regulating of the army, the laying of embargoes, the ordering of Indian affairs. Moreover, with the governor, they constituted the highest court in the colony to which in cases of importance appeals were permitted from the other courts.

In return for this actual power and the attendant social distinction, they were supposed in an especial manner to be the guardians of the strength and influence of the crown. And as a matter of fact, though their loyalty was frequently as question-

able as that of their brothers of the popular branch of the legislature, they might in general be depended on to resist encroachments on the prerogative, because it was to their own interest to do so. Occasionally, however, a councillor would take his obligations seriously, and of these no more notable example can be cited than the Scotch physician, Cadwallader Colden.

A recent historian of the Scotch-Irish in America has pointed out that they were not good Tory material, and that almost to a man they cast in their fortunes with the rebellious colonists. To this rule Colden is an exception. Of Scotch-Irish stock, born in Ireland and educated in Scotland, the son and the son-in-law of Scotch ministers, no firmer believer in the divine authority of kings ever held office. The development of his aggressive conservatism is somewhat obscure. Coming to America at twenty-two, he had seen nothing of political life in his own country; and it was only on a visit home that he shared in the excitement of 1715, — "*the* '15" of the Scotchman, — and raised a body of volunteers to check the march of the Pretender through the Lowlands. Moreover, though in Philadelphia where he had first settled, he had been in the official set and intimate with the governor, his interest in colonial politics had been mainly sympathetic, until, in 1718, he moved to the little city at the mouth of the Hudson, still very Dutch, despite fifty years of English rule.

The move had been undertaken in response to the offer by the Scotch governor of New York of the position of master in chancery with the reversion of the office of surveyor general. But Colden had scarcely become familiar with his new environment when his patron sailed, leaving the administration in the hands of an influential opponent, Philip Schuyler, the president of the council. And this change in turn had scarcely been accomplished when the acting surveyor general died and Schuyler promptly turned over the office to one of his own party.

However, Governor Hunter's influence was still paramount, and in a surprisingly short time Schuyler's appointment was quashed and the promise to Colden fulfilled.

But Colden neither forgave nor forgot. Years after Schuyler's death he transmitted to his son, in the hope that it might meet the eye of the future historian, a description of his old enemy full of unalloyed bitterness, while at the time he flung himself into an arraignment of Schuyler's administration of the Land Office that helped largely to bring about his suspension from the council. When, moreover, his influence had been strengthened by the arrival of a new and friendly governor and by his own appointment to the council, he suddenly disclosed the political convictions which long experience never mellowed nor wide knowledge ever broadened.

He had found that the crown was being cheated right and left by the landed proprietors, and he proposed that such cheating should cease. This was well. But he made the fatal mistake of backing his proposition by political considerations. The question was bound to be brought into politics some day, but to bring politics into the question was a different matter. And that is exactly what Colden did. It was certainly reasonable enough that the crown should collect its debts, but Colden thought fit to add that it was also necessary, if it wished to preserve the independence of its officials and the dependence of its subjects. Colonial officialdom, he wrote home, must be supported independently of the people, or colonial officialdom, in its present form, at least, might have to fight for its existence.

It would have been lucky for Colden, and for others too, if he had realized with Walpole that "to reconcile is perhaps a more amiable virtue in a patriot than to reform." [1] A great

[1] Horace Walpole's "Memoirs of the Reign of King George the Third," II, p. 55.

opportunity for such peacemaking was to be his. For fifty years he was to be in touch with both members of the colonial equation, a colonist among other colonists and an official of the crown, but out of the mass of documents signed by his name or written by him for the signature of another, it is impossible to see any sign that the notion of compromise, the idea that "it is the kindest way of ruling men to govern them as they will be governed, not as they ought to be," [1] ever entered his mind. An imperial government, so perfectly organized and so firmly administered that its most distant subjects should have a fixed place and be made to keep it, was his ideal, and toward this he sought to guide his careless superiors. Accordingly, his earliest memorials to the home government hinted at the existence in New York of a community of such doubtful loyalty that had the ministry been less sleepy they would have been alarmed. As it was, they were temporarily impressed, and alarming reports of their possible action were sent over from London. Theirs was but a passing concern, however, and the lasting results of Colden's appeal were undesirable from all points of view. The great landlords were fixed in the ranks of that shifting group which stood for the future Whig party; Colden himself became exceedingly unpopular and possessed of an enduring reputation for tale-bearing and narrowness; and the idea of an irrepressible conflict between an unrestrained assembly and a sovereign government was once more emphasized suggestively.

This fixing of his reputation was particularly unfortunate, because he was at that very time sharing in the prosecution of a scheme of far-reaching importance, the success of which depended largely on the influence and prestige of its supporters. The friendly governor who had succeeded his first patron was William Burnet, a son of the historian Bishop, and a man of progressive ideas, who even before his arrival in the colony had

[1] *Ibid.*

formed a plan by which he was certain that with a minimum of effort a mortal blow could be struck at New France. It often seemed, indeed, that the power of the French in North America had no reasonable basis. An unfriendly soil had not invited men seeking their fortunes, and the troops of exiles who had fled from the mother country did not find themselves still her sons as did those from England. So year by year the number and population of her settlements remained approximately the same, while the Englishmen to the south founded new villages and saw the old develop into prosperous towns. But she had her own advantages: she was governed by one tiny group of officials in the colonial capital; her forces could be mobilized quickly for a given purpose; and her people — soldiers, priests, and peasants — each knew in their own way that the key to the situation was in their relations with the Indian tribes surrounding them. From the beginning, force, treachery, the seductions of trade, and the warnings of religion had been applied to the problem of their conquest, and by the end of the seventeenth century a chain of forts and trading-posts connected the St. Lawrence with the Mississippi, and a hold had been gained on the Indians of the West that endured even after the French had been driven from Canada.

The English, on the other hand, had inherited Indian relations from the Dutch which at first made counteraction impossible. For they had succeeded to the friendship of the Iroquois, who, having been long-standing enemies of the Algonquins, the original allies of the French, had included the French and all their connections in their hostility and constituted a barrier beyond which the English could not go. James II, indeed, had effected a temporary reconciliation, but his motives were religious, not political, and, naturally enough, it was the Catholic French who profited thereby. Certain Mohawks and a number of River Indians were won over to Catholicism and went to live

near Montreal,[1] and then an English trading expedition organized in all good faith was attacked so treacherously that the peace was declared broken.[2] Indeed, the English colonists themselves were not yet particularly eager to increase their trade. They were agriculturists first and traders next, and their own Indians consumed their surplus imports. This condition was somewhat changed, however, when in the war called Queen Anne's a treaty was negotiated by which the neutrality of the Indians on both sides was secured. Yet again it was the French who were the gainers as far as Indian relations went. For when intercourse with the English was forbidden, the praying Indians, in other words, the converted Mohawks, were easily induced to run the risk of fetching from Albany goods for the Indian trade which it was impossible to procure as cheap elsewhere. And this arrangement proved so profitable to New York merchant and French trader alike, that after the war was over, it was continued and the Indians with their long crucifixes became a feature of the frontier settlement.

Now it was by a blow at this very trade that Burnet proposed to accomplish his object. Greater facility in producing the goods desired, a shorter and less difficult voyage, and lighter trade restrictions made it seem probable to him that the English trader could so undersell the French as to put him out of competition, and in the long run drive his countrymen out of their North American possessions. This could only be done, however, if the French were kept from obtaining English goods imported by English colonists. And, fortunately, the assembly of New York, the only colony which could hope to rival the French in the Indian trade, passed at once on Burnet's arrival two acts looking to this end. Of these, one prohibited trade with the French under heavy penalties, with the purpose of forcing the merchants

[1] This defection occurred about 1671.

[2] Smith's "History of New York" (1829), Vol. I, p. 69.

to send men to the West; the other levied an import duty in order to establish a fund for the building of forts through the Indian country.[1]

But this was only the beginning. Opposition both without and within was to be met; the Indians were to be interested; the people were to be shown how to expand their trade. Burnet set about his work with enthusiastic zeal. Yet he soon perceived that he could not fight successfully alone, and even as he felt the necessity of a confidential adviser, of some one of sense and ability, in active sympathy with his aims, found his requirements completely met by the surveryor general. In one of his first letters home he suggested him as a desirable councillor, proposing for a second vacancy in the board James Alexander, another Scotchman and Colden's intimate friend. These nominations were confirmed in 1722, and thereafter Colden and, to a lesser degree, Alexander had much to do with the development of the policy of the New York government.

This policy was energetic and progressive. A small trading house was built in the wilderness on the southern shore of Lake Ontario where the city of Oswego now stands, and a picked company of seven young men were sent to take it in change. Moreover, when, in the summer of 1722 and again in the autumn of the next year, Burnet, accompanied by Colden and other councillors, went to Albany for the periodic renewal of the alliance with the Iroquois, he gave the Indians an alluring account of the advantages of the post and urged them in turn to spread the news. Results followed unexpectedly soon. Canoes full of strange Indians became no uncommon sight at Oswego, and many even ventured as far as Albany. The praying Indians were seen no more, and the frontier trader began to send, or go himself, to the West. But it was harder work, and he did not

[1] "Journal of the Votes and Proceedings of the General Assembly" of the Province of New York, I, p. 149.

like it. Even the supporters of the change admitted that it would probably be some time before the volume of the new trade with the "far Indians" equalled the old trade with Canada. And, finally, it had been necessary to lower the price of Indian goods by way of advertisement and inducement. With a deaf ear to Burnet's magnificent possibilities and an eye to their own balance sheets, the merchants of New York and England determined that the acts must go. In the summer of 1724 they obtained the repeal of the Import Act, though it had the approval of the Board of Trade, and then proceeded to attack the trade acts.

Fortunately enough, it happened that the year before, Colden, at Burnet's request, had prepared for the use of the ministry two papers, one on the trade, the other on the climate of New York.[1] The first was a fair-minded attempt to show Great Britain that restrictive methods with her colonies would be bad policy, as what was to their interest was to her own, and, whatever his readers thought of his argument, it conveyed, at any rate, some much-needed information. For, when the dealers and manufacturers of London and Bristol made their plea, the board was sufficiently enlightened to listen with incredulity. Suspending judgment, they referred it to the governor of New York, who referred it to his council, who, finally, reported, with the request that their report, the proceedings in England leading thereto, Dr. Colden's map of the country between New York City and Montreal, and his pamphlet on the fur trade,[2] be printed for distribution. The merchants, it seemed, had claimed that to wrest the Western trade from the French would not be to give it to the English, as even the Five Nations lived near

[1] New York Colonial Documents, V.

[2] "A Memorial concerning the Fur Trade of the Province of New York presented to His Excellency William Burnet, Esquire, Captain Generall & Governor &c By Cadwallader Colden, Surveyor General of said Province. November 10th, 1724."

Montreal, separated from the English settlements by leagues of wilderness, peopled by French Indians who could be trusted to prevent an English invasion. Therefore, what would be a merely passing hindrance to the French, who would soon find substitutes for English specialities, would prove a permanent loss to England. To these claims the council report, the work of Colden and Alexander, presented a detailed denial. It offered proofs that the policy had already passed its experimental stage; it told of the promise of its future; but it frankly admitted that it was to the future it looked for its warrant and that there would probably be such temporary loss as is often the consequence of readjustment.

Had the report stopped there it would have been a model controversial document, and the situation would at least have been made no worse. But instead, it added the gratuitous information that the New York merchants engaged in the Canada trade were responsible for the statement of their English colleagues, who had been made to believe them true. Unfortunately, the personal allusion is too characteristic of Colden's state papers to leave one in doubt as to its authorship. He could for a time discuss a measure or a policy to which he was opposed with dignity and restraint. But if he had a personal grievance against the champion of such measure or policy, and he almost always had, sooner or later his feelings swept away his common sense and he damaged his position by personal attack. In this case, it is true, no names were given, but they were easily supplied, and the resultant bad feeling was undiminished by the omission.

The merchants found it necessary, however, to change their reasoning. The Board of Trade, though they made a great fuss about the unauthorized use of their minutes, were visibly impressed both by the reports and the pamphlet, and they demanded an explanation. Their petitioners confessed that they

had described incorrectly the location of the Five Nations, but with easy effrontery they substituted another argument. The old order, they declared, had not been proved bad nor the new one better. No bushlooper, no Albany Dutchman, could deal with the Indians like the skilful *coureur du bois*, or, rather, they could not deal with them at all. So the bulk of the Indian trade of the last months had consisted of secret exchanges with these French trappers, and there had even been open dealings where men had thought it to their advantage to pay the penalty. But could these burdensome restrictions be removed, Albany would become the principal, if not the only, market for Indian goods, owing to the unpopularity of the Canada company, who held a monopoly of the Canadian fur trade, with headquarters at Montreal. As it was, the English were throwing prosperity into their hands.[1] Proofs and affidavits were offered, and again the board deliberated.

The result was the approval of the new measures. Milder methods of execution were requested, however, but the governor and his advisers felt that the acts, as they stood, must be executed strictly or not at all. Even as it was, the people shielded one another and smuggling was continuous. Therefore, instead of reducing the penalties, the prohibition was removed and a duty was levied on all goods for the Indian trade, the rate being doubled when such goods were sold to the French. Under the circumstances it was believed that this would prove an even more effectual prohibition of the trade with Canada than had been the case with the earlier legislation. But the French had no intention of standing still, and about this time they erected below the falls of Niagara, on land for which Burnet had obtained a deed of trust from the Five Nations, a bastioned fort, under their usual pretence of fortifying a trading post.

[1] Proceedings of the Board of Trade on the Indian Trade Acts, May 5, 1725. New York Colonial Documents, V. See also Smith, I, 213–230.

Though they claimed the permission of the Iroquois, their right to build was warmly protested by New York, and Burnet begged that its demolition be demanded. But both crowns wanted peace, and the Court of St. James contented itself with offering a formal protest to the Court of Versailles, which considerate inaction the Court of Versailles reciprocated when, a year later, the first English fort on the Great Lakes was put up at Oswego and garrisoned with twenty men and a sergeant.

This, the great achievement of Burnet's administration, and accomplished partly by advances from his own purse, was also the last. With what seems amazing perversity, the governor and his chief adviser had reached a depth of unpopularity from which ascent was impossible, and their brilliant and single-minded partnership was about to be dissolved amidst popular disapproval. To see two officials of statesmanlike qualities working together for the general good, as Burnet and Colden had worked, was well-nigh unprecedented in that place and time, and if they accomplished much, they should have accomplished far more. But a series of mutual and individual blunders had created hostilities that at length would have killed any measure they might have proposed. Colden's first reports as surveyor general, charging, as has been said, the great landowners with fraud and the people with disaffection, if not disloyalty; the famous council report in which he slurred the merchants; his share in effecting the retirement from the council of two prominent Dutchmen, Philip Schuyler and Adolph Philipse, on charges connected with their administration of the land office; and his attack on George Clarke, one of the largest landowners and the shrewdest politician in the province, had gained him enemies in abundance. On the other hand, in a church quarrel brought before Burnet as chancellor, he had decided against the more influential division of the congregation, Colden happening to be the master in chancery who issued the decree; while

on another occasion, he had been unwise enough to refuse to qualify Stephen Delancey as a member of assembly on the ground that his citizenship seemed doubtful. Now Delancey had been a member of the assembly before, and had taken out his papers as had many other good citizens of New York in the year 1725. He was besides one of the most influential men in the community and perhaps the most popular. A landed proprietor, a merchant who had made his fortune in the Canada trade; a Huguenot emigrant who had been a founder and supporter of the little French church, but who never entered its door after the chancery decision; common prudence should have warned the governor to let the evidence of his former membership suffice. But he persisted in his refusal, until he should consult legal authority, and Delancey left the house unqualified. Colden, who had been away for some time, happened to arrive in town that very night, and early the next morning the news was brought to him. The assembly was at white heat. Its own peculiar privilege, the right to judge of the qualifications of its members, had been impeached. There was general alarm also. The rights and property of all foreigners seemed in danger. Colden flew to Burnet, pointed out the absurdity of making an issue of a point where he was really in the wrong, and stood over him until he had composed a letter to the speaker sufficiently conciliatory to satisfy himself. But, though the governor apologized for his refusal and said it had been due simply to a desire to be exact, neither Delancey nor his family ever forgot.

The usual clash between official opinion and popular opinion on the jurisdiction of the chancery court and the control of the colony income added still more to the interest of the situation. Indeed, it had become so lively that Burnet took pains to drop a hint in one of his letters home that any little unpleasantness that might have been observed between himself and his legislature could be set down to his efforts to get the back pay due

the auditor general Horace Walpole. This he had done on order and with almost complete success. Mr. Walpole's deputy, he added, would confirm this statement.[1] But Mr. Walpole's deputy was George Clarke, and George Clarke owed little either to Burnet or Colden. Accordingly, he took pains on his part to tell Mr. Walpole that the opposition to his pay had all come from the government side, that the governor was losing ground because of personal difficulties with new members, and that he was losing his own friends by the system of threats and cajolery with which he was trying to force their compliance with his schemes.[2] Fortunately, perhaps, for all concerned, at this point George I died, and the administrative reorganization usual at such a time took place. Every one was changing places with some one else. And when Burnet was transferred to Boston without formal criticism of his policy, it was impossible to say that his removal had any significance which was unfavourable to himself. Indeed, his friends always maintained that his appointment to the equally important post of Massachusetts Bay, just when his position at New York was becoming unendurable, was merely a coincidence.

Taking advantage of the change, Colden decided on a temporary withdrawal from politics, and when, in the spring of 1728, Burnet left for Boston, Colden's house in town was for rent, and he had been settled for some months in his new manor-house in Ulster County. His family in Scotland were delighted at this renunciation of "court amusements" for the simple pleasures of the country, and congratulated him on his new distaste for public affairs. And a love of life in the open and a desire to bring his children up away from the distractions of that city of eight thousand inhabitants were partly responsible for the move. But it must be confessed that with Burnet away and the

[1] N. Y. Col. Docs., V, 768. [2] N. Y. Col. Docs., V, 764.

opposition triumphant, his share in court amusements and public affairs would have been inconsiderable. It was possible, of course, that John Montgomerie, the new governor, might change matters. So Colden went to town to see him take the oaths of office and observe the situation. But as the council were marching with their future chief from the City Hall in Wall Street to the Fort below Whitehall, Colden heard that simple-minded gentleman ingenuously say to George Clarke that he would follow his advice in everything. Naturally enough, Colden returned to his farming. But he never for a moment lost his interest in the drama of colonial politics. Occasional visits to town and his correspondence kept him in close touch with its development. Lewis Morris, the younger, sent him amusing but prejudiced sketches of men and affairs; Archibald Kennedy, the collector and councillor, struggled through more honest and substantial accounts, in a style which Colden was ungrateful enough to criticise as too "laconic" to satisfy one of his capacity; and the faithful Alexander supplied the deficiencies of both. Through him, moreover, Colden was enabled to retain some influence on events.

About the year 1729 William Bradford began to add to the court gossip and shipping news, which composed his *Gazette*, certain English political satires which, with slight changes and omissions, or even in their original form, were so applicable to current events in the colony that they proved once more history's habit of repetition. Stupid as they sometimes were, the idea was good, and Alexander, with Colden's assistance, began to contribute to the press on similar lines from the opposite political standpoint. At the same time Colden, under Alexander's management, wrote for publication a series of letters addressed to Apse, by which was meant Adolph Philipse, the suspended councillor and the leading antagonist of the chancery court. Already, in the summer after his removal, on one of his

visits to town, he had joined with other councillors in an attempt at once to champion that court and vindicate such championship, and these letters were intended to keep the issue before the colony. Alexander was only too glad of this chance to work with his friend once more. Yet he was a discriminating admirer, and when Colden's intense partisanship seemed excessive did not hesitate to urge less rhetoric and more reserve.[1]

Meanwhile, Montgomerie, with no troublesome plans or theories of his own, and only anxious to get the largest salary obtainable with as little friction as possible, had early formed an alliance with the Delanceys. These were then in control of what, for want of a name, may be called the opposition. Locally known at various times as the popular party or the country party, it stood for no fixed principles and was committed to no definite line of conduct until later it developed into the Whig party of pre-revolutionary times. Though it was the resort, for one reason or another, of men "agin the government," who perhaps once had been in the ranks of the courtiers, or might the next day be found there, it was usually led by demagogues, bent only on getting all the power they could. Now and then, however, there were issues which brought men of real patriotism to the front, men who, though loyal to the crown, wished to curb its representatives. These found themselves leaders of the opposition, and long after the crisis was over and they had dropped out of politics, their name and cause would lend prestige to their quondam associates. The real leaders of the opposition, in distinction to these occasional pilots, had long been pitted against the administration in the struggle for the control of the colonial purse. In this policy they had already succeeded in part; that is, they could hold the revenue and keep it from others, but the money itself could not be spent save by warrant of the governor and council. And up to this time these officials

[1] Colden Correspondence, 1711–1737.

had resisted all attempts to ignore them in regulating expenditure. Now, however, the assembly, having cut the salary of the chief justice, Lewis Morris, saw an opportunity of forcing the council tacitly to acknowledge that their will was law, whatever the royal instructions might say. The governor was hand in glove with their leader; George Clarke and Francis Harison might be depended on to oppose any one who had been a friend to Burnet; and three or four other councillors were too stupid to care which way they voted. Moreover, old Delancey's oldest son, a Cambridge graduate, had just been made a member of the board on his return from the university; Colden was seldom in town; Kennedy was pliable; and Alexander and young Morris could do little by themselves. The assembly were right. Montgomerie long shirked the issue and sought advice from Alexander and even Colden; Alexander maintained a dignified opposition, and young Morris stormed and harangued, injuring his father's cause more than he furthered it. But, finally, warrants were signed by the governor and council to which their consent had not been asked. The opposition could felicitate themselves. Another governor might indeed demand the ancient privilege, but a precedent had been established sure to make his claim less certain of satisfaction. Colden could only look grimly on and wonder why it was no one's business to put a stop to such innovations before it was too late.[1]

About this time, however, he was brought into closer connection with provincial life through his relations with the patentees of that famous strip of land known as "the oblong." Of this he was part owner and surveyor, acting besides as general adviser to the patentees in their long litigation with rivals in England. Indeed, his advice was felt to be so indispensable that even George Clarke went so far as to say that he

[1] Colden Correspondence; Governor Montgomerie to the Lords of Trade, June 30, 1729. N. Y. Col. Docs., V, 877.

would have nothing to do with the scheme unless Colden was equally concerned. When, moreover, three years after his arrival, Montgomerie died and was succeeded by Colonel William Cosby, Colden's office enjoyed a distinct increase in importance. Vain and ignorant, a bully and a snob, yet good-natured enough when he had his own way, Governor Cosby, as well as my lady, his wife, was determined to make their American sojourn pay well, and to put forth as little effort as possible in attaining this object. The crown lands of the province were the means by which the happy result was to be achieved, and a knowing friend at home had advised the governor to make Colden's friendship his first object, for Colden could guide his general policy as well as further his personal ambition.[1] But Clarke, plausible and insinuating, was on hand to welcome the unsuspecting adventurer, and Colden was sixty miles away. Naturally enough, Clarke once more became confidential adviser to the governor, and soon had him almost as completely in his power as Montgomerie had been. Not quite, however. Colden knew more about the vacant lands than Clarke or any one else. So Mrs. Colden and her pretty young daughter Betty were made much of at the Fort, when they came down on a visit, and Colden was begged to come down himself. This he had little desire to do. He did not trust the governor; he felt uncertain about his position; and he wanted to feel, if the worst happened, that he had at least been independent. Hence, while party feeling was higher than it had been for years; while Bradford's rival, Zenger, lashed the administration with wit and satire until the *Gazette* itself was also forced to become interesting; while the imprisonment of the intrepid journalist gave rise to a fierce debate on the right to criticise one's betters; while the press was confirmed in this right; while the court party and the country party took to themselves taverns and

[1] Alured Popple to Colden, November 1, 1734.

formed clubs; while some of the plain people were beguiled by invitations to Fort gayeties and others looked on with Homeric laughter; while the chief justice fell and American affairs actually became an object of interest in London, where Cosby's misdeeds were talked of in the coffee houses, Colden mastered his few law books, looked after his improvements, dreamed over his theories, and with quadrant and compass opened up new regions and put in order old ones.[1]

He was, to be sure, a councillor still, and there was considerable criticism of absentee officials, aimed at no one else but himself. His friends, also, seemed to think that if he would only come down, he could do something. Just what, it is difficult to say. The minority's force had been diminished by the confirmed suspension of Lewis Morris, and when Colden did come down, he could do little more than speak his mind. This he never hesitated to do. For instance, when Cosby one day in council presented Delancey with a commission as chief justice, *vice* Lewis Morris, suspended, and Delancey according to custom left the room, Colden asked whether he was to understand that the advice of the council was being asked, as usual in such cases. If it was, he said, he wished to be put on record as opposed to the commission, as he did not think it for the good of his Majesty's service. Cosby replied that he had not the slightest intention of consulting the council on the subject, and the matter dropped. Moreover, Colden's friends had exchanged principles with the majority. Cosby had succeeded to Montgomerie's cabinet, but those advocates of popular rights soon found that they had a different man from Montgomerie with whom to deal. Easily influenced where abstract principles were in question, he was adamant where his own personal

[1] Authorities for Cosby's Administration: Colden Correspondence, Bradford's *Gazette*, Zenger's Journal, N. Y. Col. Docs., V and VI; Council and Assembly records.

desires were involved. And as it happened that his personal desires of the moment required the machinery of prerogative for their realization, his advisers not too unwillingly became the supporters of much they had lately opposed. On the other hand, such obedient and conservative defenders of constitutional kingship as James Alexander and William Smith were forced into an attempt to prevent the establishment of a petty despotism. The attempt was in some respects successful, and meanwhile Smith and Alexander, no less than the Morrises, whose motives were perhaps more mixed, taxed Cosby's vocabulary to the utmost. In his tempestuous letters home they figured as liars, incendiaries, levellers, demagogues of the vilest description, and, indeed, delicacy at times forbade their adequate description.

But, however little Colden might love Cosby and his ways, his instincts and training forbade his appearance as a popular champion. At the same time, his friends were so deeply concerned that, had he been staying in town, he could scarcely have avoided taking a hand in the game. As it was, he kept friends on both sides. Indeed, even in the last administration, when Alexander had been at Kingston, but a few miles from Coldengham, Colden's manor, he was unable to stop there, because Montgomerie would have known that he had gone in the interest of Lewis Morris, and Morris would have been certain he had acted as the governor's decoy. And at this time one of his most assiduous correspondents was one of Cosby's most steady favourites.

This was Daniel Horsmanden, a young barrister of the Inner Temple. He had come over with letters of introduction to Cosby and Colden, loaded with debts, but hoping to make his fortune in land. For the legitimate use of legal talents did not bring riches in 1732, though the prospect of seeing the young barrister's gown filled the court room on the day of his first ap-

pearance, and was town talk for days after. Frankly professing self-interest as the leading motive for his friendship, and sprinkling his letters with impertinent allusions to Colden's good friends, "Old Morris" and all his family, his wit and good fellowship nevertheless charmed the surveyor general into many a good turn. But, however much it might have been to Colden's interest, he was not equally helpful to Horsmanden's chief patron. Realize his danger though he did, Cosby's demand of one-third of every grant surveyed, his greedy eagerness for tips on the most desirable investments, his evident expectation of an alliance between land office and executive, at times irritated Colden almost into incivility. Therefore he was scarcely surprised when he heard from Horsmanden one day that he had been suspended from office, and though in this case intention had been mistaken for fact, it was so evident that Cosby meant to suspend him sometime, that he promptly took measures for entering his defence in advance.

He was enabled to do this through Lewis Morris, who, in England for the purpose of reversing his own suspension as chief justice, found time and opportunity in his good-hearted way to work for Colden. Cosby, it seemed, proposed to indict his surveyor general on three grounds, and these Morris set himself to refute. First, Colden, Cosby claimed, had reported that the governor was poor pay, and that his bills had been protested. This, Morris said, had not been proved true, but even if it had, he could see no crime in stating what every one knew already. Secondly, it was claimed that Colden had shown the council's letter to Newcastle concerning the late chief justice to Morris himself. This Morris flatly denied. Another man, a merchant and not a councillor, had shown it to him, and Colden was miles away at the time. This may have been true, but there is reason to think that the charge was timely in spirit, at least, for, by his own confession, Morris was shown the council minute regard-

ing his suspension some days before the suspension itself reached him, and as Colden was the only councillor present who was friendly to Morris, it is possible to infer a fact closely resembling Cosby's indictment.[1] Finally, it was stated that Colden had served the prince in 1715. Fortunately, the Marquis of Lothian, the intimate friend of the powerful Duke of Argyle, and a chum of Colden's boyhood, had, as Lord Jedburgh, been the means of his raising a small company to meet the Highlanders who had come south to support that same princeling, and to him Morris appealed. The real reason for Cosby's enmity, he said, was that Colden had made an honest surveyor general. What if he did take shares in the grants, Morris demanded; he had no other salary, and it was expected that he would. However, though Lothian said a number of kind things about Colden's father, and promised to do all that he could, and Morris felt confident of success, it was perhaps as well that Cosby's death removed the necessity for further effort.

The governor's last illness was a fever, and during its tedious course the province had almost gone mad over the question of his successor. Naturally, Rip Van Dam, the senior councillor, would have become acting governor on Cosby's death. But Van Dam had been the willing, though somewhat guileless, centre of many of the storms of that administration, and Cosby had not been ill many hours before Van Dam was summoned to his bedside, with the rest of the council, and suspended. This left George Clarke at the head of the board. Yet the legal duration of the suspension and Clarke's consequent right to the government were so disputed, that it was not until more than eight months after Cosby's death, in February, 1736, when official papers arrived from England addressed to Clarke as commander-in-chief, that the normal functions of administration were resumed.

[1] N. Y. Col. Docs., V, 951.

Clarke's triumph was already complete, but its completeness was emphasized and the prestige and security of his position increased when his commission as lieutenant-governor followed close on the heels of his confirmation as senior councillor. For the time at least Van Dam and Alexander, Morris and Smith, had little to hope for. Colden, on the contrary, though he and Alexander were still the best of friends, sent congratulations to Clarke all the way from the wilderness of western New York, where he was surveying. Harmony between surveyor general and governor was desirable from both points of view, and Colden never denied that he wanted to make all the money he honestly could from his office. Moreover, he had learned how unpleasant an unfriendly governor could be. But though there is no evidence that he and his former antagonist neglected their opportunities, their administration of the land office was sufficiently just to have caused little comment had it not been for one instance. It seems that a certain lord of the isles, one Laughlin Campbell, had formed a scheme for a great feudal estate somewhere in the British colonies, with himself as overlord, and in the year 1737 he crossed the Atlantic merely to decide on its location. He found that on the whole the province of New York offered the greatest advantages. The hundred thousand acres which three years before Cosby, at Colden's instigation, had thrown open to Protestant families from any country in Europe, were gone, but he easily secured a promise of thirty thousand more, free of all charges save the expense of the survey and the usual quit-rent. Indeed, both Clarke and Colden believed that a line of frontier farms and estates would afford the best possible check to French encroachments, and were more than willing to encourage desirable grantees. When, however, Campbell returned to America with about eighty-three families, it was evident that he did not belong in this category. Neither he nor his people had any financial resources;

the assembly refused to supply the amount necessary to tide the enterprise over until crops could be gathered; and the prospective vassals had either decided on the way over that they would do anything rather than serve Campbell, or had always intended to strike out for themselves when they reached America. At any rate, some began to apply for separate holdings, and when the governor had them called together in order to find out their intentions, they one and all declared that they would not be Campbell's tenants. Then, it being evident that it would be impossible for Campbell, even with their assistance, to cultivate the proportion of his grant required by the instructions, the patent was withheld.

Such a refusal was justifiable, but it long affected Colden's reputation, and indeed never ceased to have an influence on his career. When William Smith, for instance, published his famous history twenty years later, he brought his narrative to a close with the year 1732, because he feared to stir the still-living embers of a bitter conflict; yet he took pains to tell Campbell's story in the appendix, where he said that his scheme had failed "through the sordid views of some persons in power, who aimed at a share in the intended grant, to which Campbell, who was a man of spirit, would not consent." This sent Colden to his pen, denying the ill-concealed impeachment and challenging Smith's authority, but courteously absolving him from intentional slander and informing him where truth could be found. In a later letter he begged him even more earnestly to consult the council records, to question surviving members of Campbell's company. But Smith considered his own authorities — a boyish impression, contemporary gossip, the complaints of Campbell's widow, a remembered comment of James Alexander's — sufficient, and refused to extend the sources of his information. He who ran might read that in 1741 a committee of council, with Daniel Horsmanden, then Colden's friend no

longer, in the chair, had rejected a petition of Campbell's, begging that the refusal of his patent be reversed, and had stated that he could not rightfully consider himself disappointed. Smith not only ignored this important evidence, but in the continuation of his history repeated his former statement, this time with names, and added: "Mr. Colden, to vindicate Mr. Clarke, and to exculpate himself, though not named in the former representation of Campbell's disappointment, gave himself the trouble of two letters to the author. . . . The author's object being general, he declined entering into any partial controversy respecting the criminality of individuals. Let it suffice, that the account given was consistent with information procured from Mr. Alexander, whose intimacy with Mr. Colden gives it force." From such an opponent Colden was to receive small mercy when his opportunity came.[1]

Despite many difficulties Clarke's administration progressed at first with much satisfaction to himself. His object was to get the assembly well enough in hand to prevent charges of mismanagement and incompetency, but at the same time to impress observers at a distance with the great difficulty of keeping a hold on the reins. In this way he trusted prospective governors would be frightened away, and he himself left in undisturbed possession. For several years his method worked to a charm. Lord Delaware, indeed, was appointed governor of New York, and his commission and instructions were prepared, but his resignation soon followed, and then for a long time Clarke was not even annoyed by rumours of a successor. Meanwhile, the assembly steadily advanced their claims, Clarke humouring them as much as he dared. He knew the leaders, and he knew that the rough independence of their public addresses to himself was to suit the taste of their followers. But he was assured that he would not be permitted to suffer. So he pleased them by

[1] Collections of the N. Y. His. Soc., Second Series, II, 193–214.

promising to serve as their agent in urging the royal approval of an act for triennial assemblies, and, at first, accepted an annual and appropriated revenue with a good grace. As time went on, however, his affairs wore a less happy aspect. He had not always drawn a pleasant picture of his people in his letters, and his people commenced to find out that he and their leaders had sometimes played them false. Moreover, it was a matter of general belief that only Cosby's untimely death had prevented the suspension of Clarke from following that of Van Dam, in order to pave the way for James Delancey's advancement. If this were true, it is not to be wondered at that the Delancey contingent had supported the administration but feebly. Still, though Clarke began to demand an unappropriated revenue for a term of years, and when it was refused, darkly to hint at the use of force, his own perfect self-command and personal dignity prevented the repetition of earlier squabbling between governor and legislature. And at length, some five years after Cosby's death, the comparative calm of the province and his own financial condition induced a naval officer of the family of Clinton to consent to become its executive head, his departure for his new appointment, however, being delayed two years and more.

The Clarke administration had, on the whole, proved agreeable to Colden. Much occupied with boundary disputes and various literary and scientific schemes, he yet was more in town than he had been since Burnet's time. Once more while there he was a man of importance, whose opinions carried weight. With many friends among the disaffected, he did all he could to win them to the administration. But he did good work among others who had not been his friends, and Clarke was apparently grateful. That he could do this harder work was in some measure due to his family. His big farm up the colony required the presence of himself or his wife, but two attractive

daughters just in society were their father's willing companions, and their easy popularity, which lightly rode over all party lines, was, for a time at least, reflected on Colden himself. He, however, pleased though he was at his renewed prestige, found it no compensation for the loss of his wife's society and a life of busy leisure. There was something strenuous even about little old New York, and Colden's complaints about the interruptions, without which it seemed impossible to write a single letter, sound strangely familiar. "Our party disputes are as high as ever," he wrote Mrs. Colden late in 1737, "while some are endeavouring to widen the rent, others are endeavouring to patch it up. What will be the result it is difficult to tell. . . . You may be sure we will stay here as short while as possible, but it is impossible for me to tell when I shall leave the place and affairs are in such a state that I cannot at this time propose leaving it without disobliging perhaps all my friends. . . ."

In fact, for all his activity, Colden considered himself still out of politics, and desired to remain so. Naturally, he had an almost passionate ambition to deserve well of his country, to render her conspicuous service of some sort. But he had become used to living away from the centre of things, and he had been given to understand too often that his efforts for the colony's advancement were undesired, to feel any satisfaction or confidence in their renewal. Nor was he inclined to change his mind when, in 1738, his position was strengthened by the marriage of Betty Colden to Peter Delancey, second son of Stephen and brother of James. He was, indeed, flattered by the apparent pleasure the match gave the Delancey connection, and joyfully wrote his wife that the youthful chief justice treated him like a dearly beloved father. But he was more deeply touched by the applause with which his scientific achievements were being received in some quarters, and looked forward to spending more and more time in study and experiment.

## II

When at last, in the autumn of 1743, Admiral Clinton arrived, it seemed probable that Colden's part in his administration would be very small indeed. The son of one Earl of Lincoln, the brother of another, and the uncle of a third and fourth, the new governor had obtained his appointment through one of these nephews, who had married Miss Pelham, daughter of the chancellor of the Exchequer. In truth, this connection could alone have suggested him for the important task upon which he was about to enter. There was every reason to suppose that war between England and France would soon be declared. This would mean intercolonial war, a struggle between New France and New England, with New York as its strategic point; and that would mean that New York's Indians must be well handled and that New York's assembly must be handled even better. Yet to do this England had sent a mere naval officer, good-natured and kind-hearted, but with no experience in civil administration, no natural or acquired diplomacy, no habits of self-control, and accustomed to the downright discipline of his arm of the service in the middle of the eighteenth century. He had not even been coached, as had some of his predecessors, in colonial politics and the ways of colonial politicians. He had only been told that he must look out for Clarke; that Clarke had made life uncomfortable for Cosby, and would doubtless like to make it uncomfortable for him, so that he himself might be chief magistrate once more. And Clinton was so pleased by this knowledge and by the way in which he displayed it, that, when Clarke refused to play second fiddle and resigned from the council, he thought his need for caution at an end, and rushed on his fate with a light heart.

James Delancey was very clearly the most commanding figure in the province. He was a prince of good fellows, and he

advocated a policy of concession well-pleasing to easy-going Clinton. Therefore, never thinking that Delancey might also have schemes not altogether to his advantage, Clinton did as he bade him, — recommended for vacancies in the council the men he suggested, was agreeably blind to the encroachments of the legislature, and substituted for the chief justice's old commission, which, as usual, ran "during pleasure," one with the tenure of "during good behaviour." Nor did he suspect anything when, after war with France had become a fact, even Delancey could not induce the assembly so much as to consider the administration's plans for the defence of the colony; when, even with such backing, it was common talk that a member of the assembly had told a member of the council that the assembly would oppose the administration's pet scheme, — a fort at the carry between the Hudson and Lake Champlain, — be the arguments for it never so good; when before the governor personally could have done anything to anger them, the assembly had left one of his messages unanswered and even unnoticed.

About this time Colden, who had left town almost as soon as he had been sworn in under the new governor, came down to attend the council, of which, owing to Clarke's departure for England, he was now president. As senior councillor he was also next to Clinton in line of succession, and it was soon evident that many remembered this, to them, depressing fact. "Business stands still in such a state that I know it to be needless to ask leave to be with you," he wrote his wife in September, 1744. "All I can say is that I shall not easily be prevailed on to put myself in their power again. But the present Circumstances of the War lays me under a necessity of staying unless I had an excuse that would take off all gainsaying." Yet with some good friends about him, Colden could have put up with much had he felt that anything was being accomplished. But neither the frequent reports of the sinister activity of the

French among the Indians, nor the tidings of a French naval force at Cape Breton, nor the prospect of the necessity of heavy expenditure of men and money stirred the New York lawmakers with the spirit of practical patriotism. Consultation only followed debate and debate consultation until, after two months of tiresome inaction, Colden once more fled to Coldengham. Here, lost in a new set of experiments, testing the healing properties of pokeweed and tar-water, he heard of New England's designs on Louisburg, of the impossibility of rousing the New York assembly to emulation, and of its angry dissolution by Clinton with the sanction of his council.

"The Boston expedition against Cape Breton," wrote James Alexander, "Seems a Bad undertaking. I heartyly wish it may Succeed, but I am afraid of it, for the want of Warriors & Engineers which I look upon to be as much an art as any manual Occupation. Their Generalissimo I hear is a new light man that never Saw a Shot fired in anger. The being an Enthusiast I take it to be no ill property in a warrior, but the Defect of Experience, I Doubt if that good property will Supply. Its said they had three good Engineers but owned not one of them was at a Siege. I Doubt much if Theory will supply that Defect. The number of men proposed for the Expedition viz. 7 or 8000 Seems fully sufficient were the half of them but Veterans. If it Succeed it will be the most glorious thing that has been done this Warr & the more usefull if the Conquest can be kept for its the only place of Rendezvous that the french have to Annoy the Northern plantations with from the Sea."

Yet, pleased as he might be, Clinton could win no assistance whatever from the prosperous burghers of his province. "I tired not a little at New York," wrote Clinton's friend, John Rutherford,[1] member of council and captain of regulars at Albany, "being allways in A Hurry yet nothing done especially

[1] April 22, 1745.

in the Assembly where they had a great deal of Bustle yet in the end seems resolved to leave all affairs as they found them showing no less indifference about providing for their own defence than in assisting their Neihbours; Nay they won't so much as Consult with, or act in Concert with the other provinces, refusing I find to empower His Excellency to name Commissioners for that purpose. We have four Forts here Garrisoned by these two Companys besides Oswego & neither powder or any Other Ammunition or a days provisions in one of them or in any repair. . . . I can't imagine what hinders the French from takeing Oswego and raising Contributions at Albany they must be in great Straits for provisions or something we have not yet learned. . . . I long much to see you, Pray come up as soon as you can, I have a Bed ready for you, 'Tis impossible for me at present to pay my respects to you at Colingham, not haveing One Lieutenant here belonging to my Company, being each at an Out Garrison & only Old Capt Blood belonging to the Governour, who is often sick, & you know we are but four days March from Crown point."

And again Rutherford writes on June 20, 1745, when the election for what Clinton trusted would be a more generous assembly had just taken place: "The Old Members were reelected here by Mr. Livingston's giving up his Son, & he and all the Commissioners, Justices, etc. Joining their Interest against Lidius who I'm told would have carryed it against 'em all, had Mr. Johnstoun and others who were against the Old Members come to Town, but he & many others despairing too soon did not come down and gave over acting for Lidius. I hope this will find you at New York where I have directed it for you & where I'm certain your presence will be extremely wanted, & your Knowledge and experience in affairs will be thoroughly tryed in getting things done with Such Spirit as is necessary in So Critical a Juncture of affairs both at home and

abroad, At home from the Encroachments of the Assembly; Abroad in Assisting against The Common Enemy. I see by a Plan in last week's newspaper that the Fortifications of Louisbourg are quite different from what we imagined when you was here & so strong that I don't imagine the New England Forces would ever have taken it by themselves otherwise than by Starveing them, & now that they have the Assistance of a Number of Men of War and 400 Marines doe I think they will [not] be able to make themselves Masters of the Place without great assistance from this Province, For Boston is exhausted allready & Britain too distant. as we ought to lay our accounts that our Enemy's will do what is properest for them to do, Should they send A Small Army of French & Indians from Quebec to harass our Forces from the Woods & throw in a Supply of Men & Provisions to the town 'twill render it a very tedious Siege & I hear of no Lines thrown up by our people to defend themselves & Trenches from such Attacks nor do I believe 'tis easy to do it The Soil being rocky; Soe unless this Province raise a Sufficient number of Men & Provisions Cape Breton will remain in French hands & they'l soon repent their ill-timed Saveing, be blamed by all at home & abroad & instead of thanks the Curse of their Posterity. Twould not be worth while to send fewer than 1600 & the 4 Companys in all 2000 Men, the 1600 could be raised by detachments from the militia viz. so many out of each 100 delivered by the Capts of Militia to the Capts appointed for the service & this done as soon as the vessels at New York & Albany Sloops could be fitted to transport them which I should be of opinion could be done in a fortnight if Gentlemen of Familys Interest & Character resolve to goe on the expedition & get about it with Spirit. Governour Clinton has Allready done everything in his power to promote the honour & Interest of His Majesty & The Province, how ill he has been supported in so laudable designs hitherto we have seen to the Sorrow of all

Men of Sense or honour in the Province, & indeed I have some fears at seeing so many of Last Assembly re-elected that it may prove difficult to make them understand their true interest & proper way of serveing themselves the Publick & their posterity by doeing what is necessary for supporting the honour & Interest of this Province & annoying our Enemy's, whom we'll find ten times the expense of defending ourselves against when attacked here, than in preventing that by attacking them when so fair an opportunity opens of doeing it to good purpose. Should This Assembly follow the example of the last I hope, I dare say The council will take the most vigorous measures by exerting their own power here & proper applications at home, to oblige the Assembly to confine themselves to their own proper business of levying what money is judged necessary upon the people by the properest & least oppressive methods, & no longer pretend rebellion, I own I am much surprised how any former Governour could give up His Majesty & their own power & Authority in so many different things intrusted with them, & now lost proves [it] soe prejudicial to the Present Governour & to the Publick. As I had the pleasure of talking these affairs all over with you when you did me the honour of A Visit here, You know my way of thinking on these matters & if my comeing down, tho' 'twould be very inconvenient, can be of the Smallest Service I am ready at a minute's warning. I beg your thought of affairs as soon As you receive this for I know by that time you can form some judgment of them."

Though elsewhere, as in Albany County, the members of the last assembly were generally elected to the new, the dissolution did for Delancey just what he had probably meant it should accomplish. For Philipse, long time speaker, and the one man who had ever opposed the chief justice with success, was defeated, and David Jones, a member for Queens County, who had been curiously intimate with Delancey, though they had been of

opposing forces, was put in his place. Colden had ears to hear, and wrote begging the governor to make his excuses to the council. The absolute cessation of the work, and therefore of the profits, of the surveyor general's office due to the French war, the increase in the expense of living arising from the same cause, together with the recent marriage of a son, made it necessary, he said, that he should devote himself more exclusively to his private affairs. "The attendance on the Council," he continued in his letter to Clinton, "puts the Gentlemen who live in town to no extra expense & their number is sufficient. We in the country may therefore hope to be excused when there is no necessity but if it be tho't requisite that some of us who live in the country attend as Mr. Livingston did not attend last Session & has not in general given his attendance so often as I have done & has not the same excuse which I have, I hope my excuse may be preferr'd to his. I suppose that the Business of the Session is concerted before the meeting & when that is don as I take it the business of the Council is little else beside formal because we have no parties nor disputes among us. Whenever my attendance shall be thought of real use I shall very cheerfully give it but when it is not so I hope it will not be insisted upon or that Mr. Livingston & I be so far indulged as to give our attendance by turns. As I am in no way upon the reserve in giving any assistance at this time I shall freely tell you one thing which in my opinion ought to be tho't of before the meeting of the Assembly & measures concerted concerning it. There is no doubt that the taking of Cape Breton will give uneasy apprehensions to Canada & that they'l expect to be attacked next. They must of course think of everything to prevent this. I know of nothing in their power likely to be so effectual as inciting our own Indians to revolt against us which with the assistance of the French & French Indians would give us work enough at home & that the French are actually

upon this project I think appears plainly enough by the conduct of our own Indians at this time. Our Indians the Mohawks in particular by all accounts are very much dissatisfied & have been so many years, & several of them gon this Summer to Canada under this ill disposition. When I was among them about seven years since they were so & by all the information I can obtain it has not lessen'd but increased. It seems to be likewise certain that the Indians are so far from having any Confidence in the men who have the Commission for Indian affairs that they have an absolute diffidence of them. Neither have the people of the City of Albany any confidence in them, it is impossible then that the Indian affairs can be well managed in their hands.

" It is not difficult to discover from what this arises but be it from whatever cause This diffidence of it makes it necessary to put the management in other hands & in my opinion the Indian affairs will be better managed by one or two than by such a number as now are in commission especially in time of war which requires in all urgent cases at least the greatest secrecy and greatest dispatch. There is no doubt it will be easier to find one or two men fit to be entrusted than twenty as the case now is. Perhaps this may occasion a greater expence because when people serve the publick without any private view they'l expect different pay from what will satisfy those who make use of public employment only to their private profit but be that whatever since it is necessary it must be provided for & in my opinion it is more necessary for the defence of the province than the Fortifications about the city of New York. I am likewise of opinion that His Excellency's meeting with the Indians will not be of that use which is expected unless the present disposition of the Indians be first taken off by a continued and assiduous application of such means as may be necessary. Now, Sr, if such an expense be so necessary as it

appears to me must it be provided for whatever it be but I believe that if the money usually given to the Comrs of Indian affairs for that Service and the Duties on the Indian trade were put under proper regulation the extra expense will not be so great as at first may be imagined. Now, Sr, if there be any resolution to take the Indian affairs under consideration next session to any purpose I will if desired cheerfully go to town to give my assistance if my assistance shal be thought useful from my formerly having taken as much pains to be informed of the Indian affairs and treaties with the English & French but if nothing more is likely to pass the Council than the necessary money bills & the common affairs, I hope for the reason I have given I may be excused & for this purpose I beg of you (if you think it proper) to convey what I now write to the Gentlemen of the Council."

Then proceeding to prove what he said, Colden sketched the official career of these Indian commissioners. Traders for the most part, they had again and again been accused by the Indians of fraud and bad faith, and they had often richly deserved the accusation. Indeed, that they used their position to force the Indian traders visiting Albany to come to them first, and then had used the colony money to make them so drunk that they could cheat them as they would, was only one of their customary methods, to which Colden himself was willing to swear. But for their complete success it was necessary that the Indians should be neutral in war. Under cover of the neutrality of the last war, when these commissioners had been so untrammelled that they had actually sold ammunition at Albany to eastern Indians then fighting the English of the more eastern colonies, they had made fortunes. Naturally, they were now eager to increase them, and apparently Clinton was going to shut his eyes to their methods. He did urge the prohibition of trade with the French Indians, enforcing his recommendation with

some of Colden's instances, but he said nothing about the commissioners, and Colden was not obliged to redeem his magnanimous offer. He kept his eye on the Indians, however, the Indians of Pennsylvania and New Jersey, as well as those of New York, and industriously kept the governor informed of what he saw in letters that effected little more than the satisfaction of his own conscience, some disappearing in committees of council, others in the assembly, while two at least bear Clinton's reproachful endorsement: "Report never made though called for by me several times."[1] But the autumn brought a comforting vindication of his judgment. For when the Indians were met at Albany by Clinton and representatives of Massachusetts Bay and Connecticut, and were told of the attacks being made on the eastern colonies by the eastern Indians, and asked to avenge them, they were so indifferent and made such frivolous excuses, that the Massachusetts commissioners openly and dramatically accused the Albany people, and especially Councillor Livingston, of the very purposes and plans that Colden had condemned. Now it happened that this same Philip Livingston was one of Clinton's attendant advisers. Therefore, to the commissioners' heated demands that the Indians be forced to give evidence of their good faith, Clinton, himself, offered a frivolous excuse, and the Massachusetts men left in a rage.[2]

It was small wonder if Clinton's policy was rather haphazard. The wonder is how he got on at all. By himself he could do little; he could not write his own speeches, he could not argue; and Delancey was too busy with his own plans to give him more than a perfunctory assistance. Indeed, his plans were such that it was all the better for them when Clinton blundered. Hence Clinton refused to reënforce the post at

[1] Mss. Proceedings of the Executive Council, January 15, 1746.

[2] N. Y. Col. Docs., VI, 296–306.

Saratoga if the assembly neglected to put it in decent repair; and when the news of its destruction arrived in the midst of the wrangling about its preservation, fixed the blame with such tempestuous violence that the really guilty and frightened members regained their good repute and courage; hence he deeply offended the militia by despatching some of their number on frontier duty, and then was obliged to look on helplessly while the rest refused to mount the usual guard at his house; hence he criticised the Indian commissioners with such a good-will that they wrote it would give them great pleasure to resign; and hence at last, he quarrelled with Delancey himself, the political "chief" of the province. The break occurred one night after dinner, and neither was in a judicial frame of mind; yet when Clinton blurted out that he was tired of being managed and proposed in the future to maintain the dignity of his position, and Delancey flung himself out of the room vowing that Clinton's life should be made miserable, they only did as they had long wanted to do in their more rational moments.

As usual, fortune was kind to Delancey. The governor had scarcely recovered from the shock of parting when word arrived from Newcastle that his government must raise and provision a quota of volunteers to join in an expedition for the conquest of Canada. The troops raised in the colonies from Virginia to Connecticut were to attack the French by land, while those from the eastern colonies, supported by a fleet and eight battalions of regulars from home, were to attack them by water. Clinton was in despair. He must win the Indians to active participation in the scheme, he must persuade the assembly to finance it. Yet how was this possible with no one to prompt him, no one to assist him in any way? He had, moreover, something new to contend with in the form of a steering committee organized jointly by council and assembly. This committee, which had Delancey for chairman and Horsmanden

for secretary, prepared legislation and outlined policy, reporting once a week, and from the beginning it enjoyed supreme power and influence. It swayed the assembly, while among the members of the council, Livingston and Horsmanden, Cortlandt and Bayard, Delancey and Murray, were its leaders and spokesmen. This left Rutherford, Colden, and Kennedy, the first a regular army officer whose place in war was on the frontier, and the last-named a man who was as slow with the pen as the governor himself. To Colden, then, Clinton in his extremity turned. To the formal summons issued to all absent councillors he added an urgent personal appeal, and when, about the middle of June, 1746, the senior councillor arrived in New York, quite unprepared for the change in political relations which had taken place, he was positively frightened at his own excessively cordial welcome and at the sight of the lonely governor. "As I have been long from the public business," he wrote to Mrs. Colden, "I cannot with any countenance ask leave to return home at this time & it would not easily be granted by the Governour unless there were a very evident reason for it. Notwithstanding of this I wish very heartily to be with you for my being in town at this time has occasioned a great deal of Jealousy among some folks. To remove it in some measure I design to go to-morrow to Westchester & to be absent two or three days. The Governour desired me with some concern to go with him to Albany but I with a great deal of earnestness declined it & I hope to hear no more of it. We have no news as yet but every moment expected."

Colden's hopes were vain. "I have the honour of yours of the 3d Instant & your Essay which I expect great pleasure from," wrote Rutherford, " & when I have perused it you may depend on my tho't of it in the freest manner. but now the Beating of Drums for the New levys, the attention to news from

Canada, Europe, & Cape Breton & how preparations are going at New York & the neighbouring provinces for our great Enterprise against Canada, makes me write you in a very different Strain, & beg your opinion of the manner that affair is proposed to be carry'd on & what information you can give me of the above articles. As you are, I hear, now at New York, pray get notice as soon as possible how the new Battallions raised are to command & how the four companys here are to be disposed of my present view & ambition being to get the Rank of Lieut. Coll[l] by means of the new levies & at the same time keep my company in order to have something certain, how I'm to bring this about, have no notion of at present; so pray say nothing of my design to any person whatever, only make the necessary enquiry that I may know how to apply by being amongst the first to know how things are to be managed. I must insist on your being present here with the Governour, when he comes to treat with the Indians, for many reasons, most of which you can easily guess, the rest I'l tell you at meeting & only assure you at present that 'tis necessary for the publick good & as I depend upon your being my guest here I'l take you shall be free from the noise & hubbub in town for my house stands in a quiet spot opposite to the Recorders."

"I came yesterday from Westchester," wrote Colden himself on July 3d. "I staid longer there than would otherwise [have] done in order to have got soon home that I might avoid what other people generally are fond of; that is that I might be as little concern'd in the conduct of affairs as possible. But I know not, all things are at a stand & I am affray'd it will not be in my power to keep so much unconcerned as I wish to be without laying aside all concern for the success of the Expedition, & for the success of which I think no man living in this Country can be indifferent.

"The Council is call'd at nine this morning," he continued,

"& I write this expecting Mr. Clinton every moment to call for it before I go into Council." "Yesterday morning," he adds on Friday, "we had a strong debate in Council who should go to Albany with the Governour. Every one were for my going notwithstanding all the opposition I could make, & I am affraid it will fall to my lot tho' I shall use all my endeavours against it."

It was usual for a governor, when he held a conference with the Indians, to be accompanied by three members of council, the quorum for ordinary business. But on this occasion, because of the great importance of the work to be done, Clinton asked for as large a delegation as possible. Every one, however, had an excuse. The chief justice could not leave the city; Horsmanden would not go unless he was paid for former journeys; and they all said it was Colden's turn, who, with Livingston and Rutherford, already on the spot, would be all that was necessary. Colden did well to hesitate. Painstaking and logical, learned and strenuous, he must have known that he was no match for the careless and superficial, but witty and brilliant Delancey, and to assist the governor meant to fight with him. Delancey, moreover, could count on the comfortable support of a large family connection. His brother-in-law, who as plain Peter Warren, had married Delancey's sister, had just achieved rather more distinction than he deserved as admiral of the fleet that had laid siege to Louisburg, had become Sir Peter, and a man of European influence. His Cambridge tutor, friend, and correspondent had just been made Archbishop of Canterbury; and he himself held a commission which it would take a ministry to break. Yet Colden began to think that there must be many steady, conservative inhabitants, indifferent to Delancey's easy, democratic ways, and ready to join a leader of their own type. Then, too, it seemed unfair to his family to refuse a possible opportunity for advancement. Therefore he yielded, and on the twenty-fourth day of July he was writing to Mrs.

Colden from Albany: "We did not get to this place until Munday afternoon & did not go a shoar till tuesday morning. I am now at Captn Rutherfords but their house is not very convenient & I am affray'd it may be troublesome to them."

It was no holiday task that lay before him. "We are constantly employ'd ab't something or other but it will be hard to say what we have don"; "There is something allmost every hour to take up my time because I find it necessary to think of more than what properly belong to me;" — expressions such as these fill his letters, otherwise buoyantly cheerful. When, moreover, he was able to snatch a moment from his occupations for exercise and fresh air, he feared to walk in the town where smallpox was epidemic, and if he took to the country beyond, his expeditions were quite likely to be cut short by the whiz of an Indian arrow. Unfriendly Algonquins, indeed, seemed more in evidence than the Indians whom the governor had come to meet. The Massachusetts commissioners arrived; news was received of a French army at Cape Breton; the troops began to straggle in and not a sachem had appeared. The Indians were in good hands, however, for while the commissioners were still nominally managing their affairs, Clinton had induced William Johnson, Admiral Warren's dashing Irish nephew, to corral them and bring them to Albany in good temper. His task had proved even harder than was expected. The Indians were full of real or pretended suspicions and fears, and it was not until Johnson put on blanket and feathers, danced with them, played with them, and even lived with them, that they consented to be led, gay with war paint and noisy with excitement, to the historic meeting-place.

Clinton's anxieties, however, were by no means over. "One day," Colden informed his wife soon after the Indians' arrival, "as the Govr complain'd of the trouble he had with the Provisions, & that he did not know who to trust, I took the opportunity

to recommend my son to be Commissary for Provisions. This as I take it will be more profitable than a Captns Commissn as it usually has a good Sallary annexed to it but the Commissn cannot be made certain till the General arrive because perhaps he may have the nomination, but tho' it should be so the Govrs interest, with Captn Rutherfords and my own, may obtain it if he do not bring one with him. I cannot tell that Alexander would receive such a commission, because they must go along with the army, but I could recommend him to it more freely than Cad because he is more used to business & it will require much writing and exactness of accounts. I leave it to you & them to do as you shall think proper, because I cannot advise any further, it is attended with so many uncertainties ; only I would not let such an offer pass without giving my children an opportunity, if they think fit. . . ."

In excellent health and spirits, Colden was inclined to see a possible good even in apparent evil. There were troubles ahead, however, which even the most foreboding scarcely could have divined, and Colden's account of an incident which was to cause him infinite anxiety was, very natually, quite undisturbed by premonitions of the future. "The Governour has been indisposed," he wrote, "but is now recover'd, tho' it is not thought proper for him to go abroad in this rainy weather & for that reason I spoke to the Indians in his name yesterday. It seemed well rec'd. No news of the fleet or of a General but every moment expected." [1]

The conference had been as successful as any Indian conference could be, but Admiral Warren and Governor Shirley, of Massachusetts, wanted something more than an amiable interview. Accordingly, they wrote to Clinton asking him to join in an immediate attack on Crown Point, the French post on Lake Champlain, and Clinton referred the letter to his

[1] To Mrs. Colden, August 20, 1746.

attendant councillors. Extraordinary business, according to his instructions, required a council of five, and this was extraordinary business indeed. But the three members in Albany, though sensible of the risk they ran, heartily advised coöperation. The responsibility thus taken from his shoulders, Clinton hastened to promise assistance, gracefully leaving the choice of a general to Warren and Shirley. "I wrote Alexander the beginning of this week," says Colden, late in August, "wherein I inform'd him that we had succeeded to our wish in our Treaty with the Indians. If the fleet had arriv'd I doubt not everything had succeed'd in like manner. The uncertainties we are under will certainly keep us longer in this place than was imagined. An Express was sent to Boston last night at the return of which we shall take our final resolutions." On the 19th of September he reported : "An express we sent to Boston was detained there so long that it was 3 weeks before we receiv'd an answer. The General is now every day expected — One Waldo from Boston. A vessel from Cape Breton came in which in her passage saw 30 ships whether French or English she cannot tell. Capt$^{ns}$ Roberts and Marshall are appointed Lieutenant Collonels, & Captains Clark and Rutherford Majors of the New York forces." At last it seemed as if something was to be done. "The General is not yet arriv'd," was Colden's next bulletin. "One half of the New York forces, viz. Colonel Robert's Battalion, have receiv'd orders to be in readiness to march. What the other Battalion is to do I know not. The Gov$^{r}$ is making ready to return. I would be glad to have leave to go before him, but I must not swallow the Cow & stick on the tail. The company raised in our County is like to have officers to their own liking."

Unfortunately, it had been a French, not an English, fleet that had been seen on the American coast. In fact, the English fleet had sighted it some weeks earlier, and for that good

reason never crossed the Atlantic. For the same reason the New England levies, confidently expected at Albany, were flying to protect their farms and homesteads, and Canada was to remain undisturbed during that year at least. The news of this was long in reaching New York, but fleet or no fleet it was nearly time for the assembly, and the governor was obliged to return. However, since Governor Gooch, of Virginia, who had been offered the command of all the forces, had now definitely refused it, and the New England man chosen to command the Crown Point division was so mysteriously detained, Clinton was commander-in-chief of the troops on the spot, and their winter campaign must be planned before he left for the capital. As a result of his deliberations with his council, Colonel Roberts was put in command, and it was decided that the New York levies should march to the carry, where Clinton had long wished that a fort might be built, and there wait for news of the Massachusetts troops. If this did not arrive within a certain time, they were to put up winter quarters and be on hand for an attack in the early spring. The only difficulty was that the provisions for these levies were in the hands of the assembly's commissioners at Albany, and by the letter of the law must be delivered directly to the captains of the companies. Colden, however, being authorized to sound these men and to threaten the loss of their position should they prove recalcitrant, reported that by the aid of that stimulus they had seemed open to reason. It was, therefore, decided in council, that when the time came, the delivery of the provisions to the commander-in-chief should be requested; that if this was refused, an offer should be made to pay for their transportation; and that if the provisions were still withheld, they should be impressed by a warrant. This warrant was then drawn in council, and the governor left it behind him, when, after an absence of nearly three months, he returned to New York, followed a few days later by Colden.

## III

Once again the assembly was to meet, with Colden as the governor's tutor and guide. Had he but known it, his great moment had come. It was true that the assembly had fallen into the habit of considering their governors merely as gentlemen with a natural tendency to misappropriate the funds, which tendency they intended to make very difficult of gratification. It was equally true that the present governor had his own ideas about the expenditures which were still under his control. But it seems probable that Colden with invaluable results could have exacted a businesslike administration as the price of his very necessary services. As it was, he intended, "by showing as much as possible a respectful behaviour to them & by making no attempt to gain a personal power to give no real cause of resentment." [1] With this peaceable intention he wrote the governor's opening speech.

At this time the ostensible difference between Clinton and the assembly sprang from their respective interpretations of the letter from the Duke of Newcastle. Newcastle, having said that the colony was to raise and provision a certain number of troops, had ordered Clinton to send these off on an offensive expedition, and to meet and give presents to the Indians. But not a word was said of the pay of the troops, while the financial responsibility for their transportation, the transportation of their provisions, and for the Indian auxiliaries was left undetermined. Clinton wanted the assembly to save the crown the expense of the Indians, and pay, at least temporarily, for the transportation of the provisions; not only the assembly, but the council and the merchants, insisted that Clinton pay for everything, the payment of which was unspecified, by bills of

[1] Colden to Mr. George Clarke, November 26, 1746.

exchange on the English treasury, or on the paymaster of the army. The £40,000, which the assembly promptly voted, was to be spent in bounties and provisions only, and the surplus was devoted to increasing the number of volunteers called for. For this reason, during the summer Clinton had been obliged to draw on the crown. Yet every one realized that if his bills were honoured, he had an excellent opportunity to turn that dishonest penny which they had been trying to keep away from him. Indeed, Colden had already urged in vain a method of accounts that would be above reproach, and there were already rumours that the presents to the Indians had not been as handsome as they were expensive.

Such, then, was supposed to be the chief difficulty between governor and legislature. But Colden remembered that there had been an evident desire to involve Clinton in insuperable difficulty, and was quite unable to permit the fact that he had been extricated to speak for itself. Those who had wished him ill must not only realize that their plot had failed, but they must know that it had first been recognized. So the governor's speech invited its hearers to admire the transformation of Indians sulky from mismanagement, into Indians cheerful and eager to act; exhorted them to harmony; warned them against the artful, designing men who had brought about the present discord; and grandiloquently urged them to preserve the integrity of the constitution.[1] This was the official Colden in his best form, and his plea for harmony at once put an end to any hope of it. But the assembly was in a bad humour, even before its presentation. For the governor, who was still feeling wretchedly ill, had sent for the speaker, and, by Colden's advice, had given him the speech instead of going with it himself, to the place of assembly. The assembly chose to consider themselves slighted by this unprecedented proceeding, while the

[1] Journal and Proceedings of the General Assembly, II, 125–126.

innuendoes of the speech made them furious. It was necessary to relieve their minds, and when the governor sent a message requesting without peremptoriness that they provide for the transportation of the additional provisions they had just voted, as otherwise the plans of the commander-in-chief would be frustrated, they decided on a characteristic document, known as a representation.[1] While it was being prepared, moreover, word came that on the refusal of the commissioners of provisions at Albany to deliver their charge to Roberts, the mayor and sheriff by his order had used the impress warrant to seize provisions for fourteen hundred men for two months. The assembly burst into a series of resolves, accusing Holland, Colden, and Roberts of "arbitrary, illegal, and unwarrantable conduct," and demanding their prosecution; and then followed these up by their representation.

This document was perhaps chiefly remarkable as showing the possible difference between points of view. The assembly had observed no Indian disaffection; they were not impressed, therefore, by its removal. If it had existed, Clinton, to whom they had given money for a treaty and presents the year before, could best tell why, and they wished to look at the evidence. They considered themselves fully capable of guarding against artful, designing men, but they feared that a man of that description had gained the governor's confidence, and they begged him to be watchful. Finally, they frankly disapproved his winter camp, where desertions would be frequent, and where sickness would soon weaken those who were left. The administration replied to the double shot in alternation. The governor disapproved the open criticism of his winter camp; he threatened to complain to the king; and he assumed the responsibility of the provisions incident, saying that what was done had been done by his order, approved by his council and a council of

[1] Journal, II, 128, *et seq.*

war. Especially did he object to the insinuations thrown at Colden and himself, and though he declared that he would be delighted to help unearth possible fraud, he positively refused to order a prosecution. But the assembly had no intention of letting the ball drop. Voting the answer unsatisfactory, they declared that whoever was trying to create and encourage bad feelings between the governor and themselves was an enemy to the constitution they had been urged to revere, and that until redress was given, they would refuse further supplies. Whereupon Clinton, with unusual diplomacy, promised that the thing should not occur again, because the provisions would, he expected, be delivered when occasion required.

Colden, meanwhile, was quite unconscious of having said anything he should not have said, and his letters are those of a cheerful martyr. "We have nothing new here besides what is in the prints," he wrote home on November 3, 1746. "It is certain that the French fleet is gon & we are freed from all fears of them & the account of the miserable condition they were in as related in the prints is true, & worse than there related. I saw a letter from the Capt$^{n}$ of the flag of truce that left them after they had sail'd from Cheboucta harbour. We hear nothing of our fleet & we still remain under the same uncertainties we did as to all public affairs. The representation the assembly is to make has not as yet appeared. After we shall have seen it we shall be able to judge better of the affairs in this province. I left the Company I was with when you went between four & five in the afternoon & by that means came off well. The Governor kept his promise in not stopping me or desiring me to stay." "The Assembly have made a Representation which you will see in Print," he announced a few days later. "I hope the generality of people will be better pleased with his answer than with their Representation." And again he wrote on November 9: "But you will perhaps hear some

things as to publick affairs. A Base Lye printed of me in the votes. But be no way concern'd. All this will turn out to my advantage & I hope at last to the Benefite of my family. My Enemies will do more for me than my friends could without them & my enemies ought to make me amends for I have given no Provocation to any man. The only thing that troubles me is that I am affray'd I must stay in this place till the time the Ships go for England. The Govr has not spoke to me on this head but I suspect it must be . . ."

How his enemies were to assist him may be seen from the following: "It is impossible to act in the Station I am in without meeting with ill-natur'd returns for actions which perhaps are most deserving. I now can assure you that the malice shown at this time is so far from being hurtful that thereby they give an opportunity to lay open the good Services done which otherwise might have been thought vain and indecent." And Major Rutherford, with all his common sense, thoroughly agreed with him. "We are now quiet in Winter Quarters," he wrote from Albany, " & nothing stirring worth writing about but what you'l hear particularly from Coll[l] Johnston & Capt. Tirrell. All Indian storys from the One & Our March &c from the other. Shall we never hear more from England I am more and more surprized every day and am affraid now these New York Ships will be gone before the Letters arrive that were sent by the Fleet which will be a great baulk to me, as there will be no opportunity after that to answer any letters for some time. Pray write me your tho'ts about expedition affairs now. I reckon you'l be able to learn a good deal when Admiral Warren arrives. I was much surprised after so great expectations raised about it to see the Representation from the Assembly so very poor a performance, silly, trifling, & no Sort of Spirit in it. The Governour's speech I was perfectly pleased with which is saying all I can; only I wish this Representation may have such an Answer as it deserves. . . ."

Such being his sentiments and those of many of his friends, Colden would have been astonished had any one told him that he had really been assisting Delancey. Yet this was probably true. It was said that at the time of Clinton's arrival Delancey had promised to help Warren to the chief magistracy. Then Warren had got something better, and had promised in turn to help Delancey get the lieutenant-governorship, at least, for himself. This having been obtained, Clinton was to be discredited at home and driven to resign. But this plan, which was of gradual growth, was not easy of accomplishment. Clinton had many strong friends in England, and the very simplicity of his character made him a bad opponent. Scarcely had Delancey discovered this, however, when Clinton made his opening speech in Colden's easily recognized style, and the solution of the problem at once became easier. Colden should be led on to make both the governor and himself ridiculous, while at the same time Colden should be blamed for everything that went wrong, and the governor commiserated on his prime minister. This, indeed, would be killing two birds instead of one, for Colden was quite right in thinking himself the object of considerable jealousy. After all, he was the governor's right-hand man and his legal successor, and it was but likely that he was using his postion to petition the ministry for his advancement.

But the game with the assembly was over for the year, for winter was at hand. There remained the council. Colden's conduct in that body since his return had been irreproachable. He had never lost his temper; he had never forgotten his duty; he had kept the governor's secrets even on cross-examination, with exasperating completeness. Such rampant virtue was intolerable and on the 4th of December the crisis came.[1] Some time before there had been published an account of the treaty with

[1] N. Y. Col. Docs., VI, 327–340.

the Indians, and on this particular morning Colden had no sooner entered the council room than the chief justice produced a copy, and moved that the prints be sent for, and that he be asked to tell who had arranged for its publication. Murray seconding the motion, Delancey turned to Colden as if by an after-thought, and asked him had it been he. Colden looked round the room. He saw that the full council was present, an unusual event; he observed a general air of expectation and readiness; and he felt, even more than he saw, that something was in the wind. Then, his momentary hesitation over, he said that he had given the paper with the governor's approval. Delancey asked if he had ordered it printed. Colden rather inconsequently repeated that he had given the printer the copy. Delancey repeated his question, and added that, if he did not answer, the printer would be brought. Colden, seeing there was no way out, admitted that he had given directions to print it, and later even acknowledged its authorship. The paragraph in question read in substance as follows: "His Excellency having received his Majesty's commands to engage the Indian nations in the expedition against Canada, and being sensible of the difficulties that probably might arise . . . was desirous of having had the assistance of as many of the members of his Majesty's council as possible . . . but all declined to go . . . except Mr. Colden and Mr. Livingston, . . . with Captain Rutherford . . . then at his post in Albany." All this was true, yet when Colden said that he had actually written the paragraph, Horsmanden moved, in a set speech, that it be censured as an "invidious, malicious, and false representation of facts." Colden objected that a refusal to attend the conference might be as excusable as an acceptance, and the fact remained. Horsmanden hotly exclaimed that this was sophistry, and was proceeding to debate the whole question when Colden reminded them all that he was sitting as chairman of a legislative body, and that

they had better show him decent respect and discuss the matter some other time as privy councillors. Delancey, however, muttered something about the power of the Lords over the privy councillors and the Commons, and, ignoring Horsmanden's motion, moved that the paragraph contained a misrepresentation of facts, and an invidious reflection on members of the council. The question was carried, the proceedings were ordered printed, and the meeting adjourned.

Four days later a detailed account of the debate appeared in the New York *Post-boy*, and the same week Colden left for Coldengham. The same week, moreover, a description of the situation was started on its way to Newcastle, with a prayer for Horsmanden's dismissal from the council, Alexander's restoration to the same, Philip Livingston's removal as Indian commissioner, and Colden's promotion to the lieutenant-governorship as the fitting reward of his zeal and loyalty. Whether or not the council surmised that he would resort to such a course, Colden was scarcely gone when certain of its members presented the governor with a document recounting the misdemeanours of his chosen adviser, and solemnly warning him of his probable aim. It was he who had refused to go to Albany, while they had merely desired to be excused from going; it was he who, having been prevailed upon to go, had persuaded the governor to keep the proceedings of the council at that place a secret, and had refused to tell the governor's orders to Roberts; it was he who had maintained that the council of three at Albany was the council itself, and not a committee thereof; it was he who had promised to submit certain papers to the council and then withheld them; it was he who had advised the unusual method of delivering the speech at the opening of the assembly; it was he who had advised the speech itself; it was he who had "told the world in print, that he was the next person to his Excellency in the administration," thus furnishing a clue to his

policy; it was of him there could be told many "other little instances of vanity calculated principally with a view to raise a character," and in general, it was he who, since he had ceased attending his own domestic affairs in the country, had brought about such a change in the relations between governor and legislature.[1]

This representation was dated December 10, 1746, but when Clinton wrote to Colden on the 17th, he said nothing of it. He was writing to ask Colden to answer the Board of Trades' annual catechism for him, and having despatched his business, concluded as follows: "I have advices from Govr Shirley that the New England troops are all marching towards the frontiers of this Province for the Reduction of Crown Point unless the Small pox prevents which I have acquainted Govr Shirly still prevails among us . . ." But if Clinton did not consider the assembly's latest performance of supreme importance, there were others who did. "As soon as I heard of the representation," wrote Archibald Kennedy, on December 22nd, "which was not till after they had been with the Govr, I desired Mr. Catherwood that our friend might have the perusal of it, who tho't the best way would be for the Govr. at present to take no notice of it, either to them or at home, at least till he had your observations upon it, which it is possible may still reach Mr. Catherwood, Waddel being at a loss for hands. He thinks it one of their best performances designed Chiefly to prevent the consequences of His Excelly's resentment at home. We have had but one Council since you left us upon an express from Shirly. . . . This thing is not to be printed, where it was hatched you may guess, but it was licked into shape at the Cart and horse where I hear they had many meetings."

Owing possibly to nothing more avoidable than the severe weather of that winter, Colden himself did not receive the rep-

[1] First Collection of Public Papers (Colden Correspondence), 1727–1763.

resentation from Clinton until the 15th of January, 1747, though the despatch was dated many weeks earlier. But he lost no time in preparing his defence. "I have been so much hurried in drawing an answer to the representation so as that it may reach his Excellency before Stratford's snow goes," he wrote to Kennedy on the 18th, "and to make fair copies that I am affray'd of some omissions or inaccuracies as well as from the warmth it may be supposed that performance must give me & therefor I beg of you to wait immediately on his Excelly and tell him that I desire you may have the perusal of it and to show it to our friend. After which I submit to his Excellency and your opinions what use is to be made of it. I am persuaded they will send it the Representation home from themselves with perhaps something more than they now discover and therefor I think we ought to be as much as possible upon our Guard, for I am far from thinking their view is only defensive. . . ."

This reply to the attack of his fellows, addressed as theirs had been, to the governor, contained at least three statements open to criticism. In the first place, Colden says that he was not in the council, but on a visit to his daughter, when the Albany delegation was discussed, and that his objections to going were made afterward in a private conversation. In view of his own letter this is a curious lapse of memory, and one hard to understand, when his presence was so easily susceptible of proof. In the second place, when explaining his secrecy in regard to Clinton's orders to Roberts, he said he thought it inexpedient to confide military details to a non-military body one or two hundred miles from the army. Then remembering that the body who had passed on all these details was by many considered but a committee of this same council, and that he himself was accused of calling it the council itself, he added that he had not been questioned as chairman, and that he would not have considered the questions pertinent anyway, as the

governor might very possibly tell him, the second in command, many things he would wish no other to know. Thirdly, he reminded Clinton that he had not approved his plans, only advising what he desired, and that Clinton himself had lately seemed conscious that his troubles sprang from the first advice he had received. With these exceptions, he answered his detractors well, with dignity, and with logic, capping his argument by an inquiry into the vanity they had descried in his telling "the world in print" of his position. This was another reference to his account of the Indian treaty. As we have seen, one day when Clinton was ill, Colden had spoken to the Indians for him, and both on that occasion and in his description thereof he had called himself, "the next person in the Administration" to the governor. The council had not permitted themselves to reflect on this heinous statement, but they had suggested that the governor consider whether it were not to "this person's" interest to "imbroil your Excellency's affairs and distract your administration." But Colden, though confessing his share of vanity, "a weed which is observed to grow luxuriously in an American soil," failed to see how his characterization of himself had done anything but show respect to the Indians and give greater weight to what he had said. He had printed it merely because he was printing everything that had happened, and it was difficult to see how his vanity could be increased by telling what every one knew before.

But, notwithstanding his superior logic, Colden was alarmed and had been so ever since, in the previous November, he had observed a tendency on the part of the governor's late opponents "to make their court to him [Clinton] though in a very odd manner." He had even written twice to engage the good offices of George Clarke, and had accompanied his formal reply to the council by this personal appeal to Clinton: "I believe your justice & natural compassion would lead you to defend

& support a stranger attacked in the manner I am by these Gentlemen. Yet I presume on something more in this case from your Excellency's generosity. Your Excellency knows how far it was from being by my own desire to medle more with the publick affairs at that time than I had formerly don during the preceding part of your Excellency's administration but that I entirely took the part you was pleased to put upon me at your own earnest desire tho' at the same time the sense I had of my Duty made me more easily comply when I saw your Excellency necessarily engaged in a multiplicity of unexpected affairs of great consequence to his Majesty's service & so far deprived of the assistance of others whos Duty it was to assist you that their endeavours seem'd to be calculated to perplex you in your administration and to make use of these difficulties to wrest the reigns of Government out of your hand and with this in view did all in their power to expose your reputation and to lessen you in the eyes of the People. Your Excellency may remember that I was apprehensive enough of the haughty & insolent Spirit of some men but indeed I did not apprehend that Pride & resentment would have made some of them descend to attack innocence with the neglect or rather subversion of everything that is accounted honourable among Gentlemen. But upon Recollection of what has passed in former times I am convinced that I had not then that precaution which I ought to have had. For these very same men — I mean the leaders — formerly attempted the same thing but the bad success of their attempts at that time I was in hopes would have deterr'd them from the like attempts for the future. I am now convinced that what is in nature can never be driven out nor amended. Your Excellency no doubt perceives what reason I have to wish that I had continued in the innocent amusements I enjoyed in my retirement. I had just return'd to them when I had them again interrupted by this extraordinary representation. I shall endeavour

as soon as possible to free my thoughts from this disagreable subject and return to my usual conversation with men whose endeavours all their life was to discover & establish the truth."

If Colden's defamation was long in reaching him, his defence travelled fast, and Kennedy wrote but four days after the date of the final draught:[1] "I received yours of the 18th, and did as you bid me. Your answer was thought a little too warm and that about the Govers giving up too much of his power fitter for A private advice than to appear in publick. However, I was of opinion it should goe to Mr Catherwood but not to goe out of his hands and only to use such extracts as may be thought necessary. You will I believe have time enough to soften things and leave that part out before next ship by Stratford. The Governour is not very well and I believe has not read it, the Ship being to sail at 2 o'clock. We have no manner of newes besides that the Bostonians seem to press the expedition against Crown Point which is absolutely impracticable this winter. I hope we shall see the 3d of March." And on February 9th he had this to say: "I am glad we hitt upon the proper use of your answer, as the Governour never read it being at that time much out of order, and Hilton just upon goeing. I should think a copy for him to make what use he pleased of it (by Stratford it cannot goe, for he will certainly sail in a day or two) would not be amiss. We have had but one Council I think since you left us, the subject at least of our meetings has only been about sending off the french prisoners and attacking Crown point, which we have reported, according to our opinion impracticable this winter, at one of those committees Mr. Hn. made a discovery of which he was not a little fond, vizt. In the minutes it was inserted 'This day His Excellency laid before the Council the transactions at Albany read, and ordered to be entered on the minutes' and a few days agoe, after making our report Mr. Mr

[1] January 23, 1746/7.

[Moore] moved for a Commitee to enquire upon oath how that minut came there, they imagine I suppose it was either you or the Gov^er^ ordered it *parturiunt montes.* — You see the spirit still subsists, But as you have put your hand to the plough give me leave to add two or three more Latin words *tu ne cede malis, sed contra audientio rito.* I hope we shall see you some time before the assembly sitts. Mr. Shirley it is said is agoeing home. Mrs. Murray very sick from cold catched at an assembly where Miss and Mr Clinton mett with indifferent treatment, upon which account I hear Capt Scot is out at Court. His affair with Miss Montgomerie amuses the young folks and further this deponeth saith not."

It was, indeed, very evident that, if Colden's friends had anything to say about it, the plough was not to be left standing alone just yet. "Yours of the 10th inst. I was favoured with by ensign McClaghry," wrote Rutherford on January 18, 1747, "and I assure you whatever you and I may think of Albany 'twould surprise you how cheerfully we pass our time. Coll[1] Roberts is gone to New York but we've still Messrs Wrexall, Honeyman, Calhoun and Capt. Campbel Commdt of the three Maryland Companys who is a very good Sort of man. I really think there has happened nothing at New York to give you the least uneasiness imaginable, for when A Man's Character is unjustly aspersed, 'tis the Slanderer only Suffers in the opinion of Every Man whose opinion is worth regarding. I have letters of the 25th October from London & which is odd not a word of our Expedition. We have been amused likewise with Mr. Waldo & his forces comeing from New England but not a word of them now, how matters will turn out God knows however I wish you were at New York as soon as you possibly can be with any convenience to yourself, as theres often no forseeing Changes and as you've put your hand to the plouw you must keep it goeing, besides 'tis allwayes dangerous to do business by

halfs and allwayes safest to go thro' with it with spirit. As to my own affairs I continue of the same mind as we talked at parting 'tis certainly the best Scheme. I think His Excellency after all that's past now can't refuse you a favour tho' 't will be allwayes doubtfull if you're not present when 't is in his power." And again:[1] "I am glad to see by yours of the 11th Inst I have now the favour of that you are returned to New York. I wish you had passed the winter there for among many other things relating to our Forces here think the Governour very ill advised in not allowing us to assist the New England troops against Crown Point. The winter proved extremely favourable for such an attempt & the troops very healthy and in good Spirits & wanting nothing but Indian shoes and stockings & some of them waist coats which could have been all got here in two or three days time, I 'm in great hopes by the first sloops now to hear from you the Contents of The Boston Packet which, no doubt, will a little clear up the darkness we're now involved in. I don't write His Excellency for leave to come down as I could not be in New York without being in Council, and if he inclined to have me there, to be sure he would let me know it; I did not trouble him with any letters this winter, there being nothing worth while but what It was the duty of His Lieutenant Colls. to inform him of & by what's past I know well he would have more regard to their accounts of things than mine. Pray what's to be done with the Pensilvania, Maryland & Virginia companys not yet Regimented? Who do you think will be impowered to name their Field officers. If Governour Clinton could be prevailed on, upon your Account to annex my Company to them I would press hard for the Coll[s] commission as I am assured by Governour Shirley & Governour Thomas that they'l doe me what Service they can & I think I can depend on their friendship if 't is either in their power to do or to recom-

[1] March 27, 1747.

mend . . . if you find anything can be done in the above or in our former project that requires my being at New York 'tis easy for you to desire the Governour to send me a line. I don't like this Scheme of the Bostoners sending 1200 men more to Annapolis Royal especially as they send Coll! Twight's Regiment with Coll! Waldo's, which regiments would have been properest of any they have to assist us against Crown Point I'm sorry we shan't have the benefit of Mr. Lidius for A Guide & to assist in Managing the Indians that may go along with us in case we should march, as he'l be obliged to follow his Regiment being a Major and Capt. in Mr. Waldo's Regiment, he is only sent back now from Boston to assist Mr. Johnstown in sending out Scalping partys. . . ."

Clinton himself, moreover, followed up his reassuring reply to Colden's appeal by the following: "As the time draws nigh for business your friends woud be glad to see you in towne particularly myself & should be glad you would come as soon as you can conveniently, standing much in need of your assistance, I have had several hints given me how things might go easier if I did so and so but I have rejected it with disdain. I was always brought up in the Principell of Honour and you may depend on it Sir I never promiss but I keep my words."[1]

"I am exceedingly sorry,"[2] Colden replied, "that the season at this time renders it impracticable to travil either by land or Water; otherwise I should have shown what regard I have to your Excellency's commands by the most speedy obedience. All the Brooks have been so high that the Bridges in most places are carried away and the hollowness of the Ground from the frost makes travelling on horseback exceedingly dangerous till the ground settles. The River is not as yet passable from the ice. But both these obstructions I hope will soon be removed & I

[1] February 20, 1746/7.

[2] February 23.

expect it will be as soon practicable to go by water as by land so that I hope in ten day's or a fortnight's time of doing my duty at New York. I am of opinion that it may be advisable to prolong the Assembly further for a fortnight because I believe business will go heavily till we have some news from England relating to this province's affairs neither can a sufficient number be expected to meet at this time. . . . If Your Excell$^{y}$ have other reasons (than provisions for the new levies) for meeting them early I can give no opinion but that I doubt not of your Excelly's forming a proper judgment if you place no confidence where you have all the reason in the world not to do it. They have a very erroneous opinion of your Excellency's understanding who think they can persuade you to trust them who have abused your confidence in the most gross manner and after the strongest obligations that could be laid on men and even to condescend to such an abject confidence in those people as to put it out of your power afterwards to receive in any case assistance from any other person. The attempt to persuade your Excellency to this can only proceed from the weakness of their Judgment accompanied with an excessive vanity in their opinion of themselves."

## IV

Colden arrived in town during the second week of March, and in the third week the assembly met. The governor's speech was simple and his demands few. He wanted presents for the western Indians, he wanted hearty concurrence in the Crown Point expedition, with all that that implied; and in a supplementary message he asked for one hundred scouts for the northern frontiers. But in the face of the information, suggestions, advice which the council had lavished, Colden had been recalled and was once more to be allowed to direct the administration. Clinton must be made to suffer for his temerity.

Further supplies for the volunteers, still dawdling about Albany, were voted, and the governor got his scouts and £150 for an Indian treaty; but for the first time on record his speech went unanswered; the "Address" was omitted. This, Colden said afterward, was "like an inferior's refusing to return the compliment of the hat." [1] Yet his opponents were only getting their hands in. Their next achievement was a petition, in which, out of deference for their up-country brothers, they called on Clinton, to use some of the volunteers as a corps of rangers for the protection of the wretched inhabitants of the county of Albany. Then, with some unpleasant remarks on the previous disposition of the new levies, they asked a recess.

This was too much, and Colden let himself go in a general vindication of the governor's conduct.[2] At first, he contented himself with controverting the assembly's statements, but in conclusion he traced the prevailing obstructive spirit back to the time when the father of the chief-justice had blocked Burnet's beneficial schemes; he showed how the same greed had since hurt the province; and in proof of its present strength he quoted a message from the French governor to the Iroquois urging their neutrality and promising, from his pity of their Albany brethren, to turn his Indians "on their most inveterate enemies of New England." An answer to its request for a recess was promised when the assembly had indicated how they were going to care for the colony. This, of course, was in Clinton's name, but the assemblymen could scarcely wait to compile another manifesto in order to denounce the man whom they knew to be its author. This representation, "brought into the Assembly, read, engrossed, and presented to the Governor within the space of two hours," placed all their infelicities to the account of the person who was honoured by his confidence, a person obnoxious

[1] Correspondence, Remarks after May 25, 1747.
[2] Assembly Journals, II, 256.

to the house. It told, besides, of all the assembly had given Clinton and of the bad use which he had made of it; and it declared a complete lack of faith in the Massachusetts plan, and avowed the decision of its authors to wait for experienced leaders from England.

But Clinton had had enough for a while, and threatening to tell the king of their conduct he granted a second request for adjournment. The adjournment, however, was but brief. About a month before, that is, on the 29th of April, 1747, word had arrived that the garrison of Fort Clinton was likely to desert in a body for want of pay; and this had been followed on the 30th by a despatch saying that one hundred and twenty men had already gone.[1] The volunteers, indeed, with the exception of their £9 enlistment bounty, had not had a penny since they entered the service the preceding summer. Clinton had as yet shown no anxiety to draw those bills of exchange which later were said to have made his fortune, and insisted on waiting for directions from England. Unfortunately, as he waited, the good people of Albany caught the ears of the soldiers, and some one had said that he who would take Canada must first take that snug Dutch town. But now the council took up the matter. They advised the governor to draw on the English government for full pay for the officers, for 40*s.* down for each private and for 2*s.* a month apiece until they received their entire due.[2] Time was necessary, however, to haggle with the merchants about the rate of exchange, and meanwhile things grew worse. The men were all mutinous. It was impossible to get a reënforcement for Saratoga. Albany was full of rumours. It was said the soldiers were not under martial law while unpaid, and that the governor had no orders to pay them; it was said again

[1] For an account of the mutiny, see N. Y. Col. Docs., VI, 357–359, 363–364, and 375–377.

[2] Proceedings of the Executive Council, April 30, 1747.

that he had such orders and was disregarding them. The Pennsylvania troops, Dutch themselves, were told that if they took half pay, Clinton could make them soldiers for life; the Jerseymen said that if Clinton paid them at all, they would be under him, and refused to take anything whatever from him. Moreover, when the colonel of these Jersey troops heard this, he promised them full pay and gave it despite the remonstrances of Clinton and of President Hamilton, his immediate superior. This made every soldier in the place desert, or threaten to, if they were not paid in full at once, while a council of field officers advised Clinton to yield, advice which was seconded by his own council. But with the fatal attraction for the wrong course, which had marked his administration, he refused to draw longer at his own risk and called the assembly. But the assembly also refused either to advance a penny or to stand security for the governor's bills, and added that his attitude showed a lamentable distrust of the king, whose intention to pay for the expedition was evident. Thus, doing perforce what he might have done with grace, Clinton wrote to Roberts that he would pay in full, and on the 18th of June, he himself started for Albany.

This time Colden was left behind. The situation of his estate and the more subtle activity of his enemies had made it an anxious spring for him, and he was glad of a slight respite: "I am at this time so deeply engaged in publick affairs by the news of a Mutiny among the Forces at Albany," he had written Mrs. Colden on May 2d, "that I have scarce a moment to myself. The Governor had resolved yesterday before we were inform'd of the heighth this Mutiny is got to to appoint one of my sons Muster Master. I design it for Cadwallader and he must be ready to go to Albany as soon as his commission & orders come to his hands." And again four days later: "As the Mutiny continues and increases at Albany and they threaten to march home & perhaps some of them are gon by this time

and as you are now on the road they may take I think it advisable and must insist on your going to your son Alexander's . . . & you can if you think proper come down with the children to this town. The rest we must leave to Providence. . . . I know you are not of that timorous temper to take what I write in such manner as to do anything without an appearance of its being proper. . . ."

Another anxiety was the exasperating silence of the home government, which, bombarded with questions and petitions as it had been, had yet never vouchsafed a line since the letter directing the expedition. This was a fine example of the "wise neglect of Walpole and Newcastle."[1] "Not one word of news from England yet. The last express from Albany gives us hopes that things will be pacified there," wrote Colden on May 12th. And again a week or so later: "It is surprising that not one word should at this time be heard from the Ministry, but as this is not in our power to help we must bear it with patience; but it lays us under great difficulties how to act." Colden's private information, moreover, was not especially reassuring. "The Governor's conduct in the Treaty the year before [1745] has been represented here in no favourable Light," Colden's London friend, Peter Collinson, had written in March. "But now you are thought fitt to be admitted in his Councils wee are persuaded if he will submitt to your advice it will give a favourable Turn to his Future administration." But he added: "In yours of December 3d you hint the extraordinary Trouble & Expense you have been at in attending the Governr and publick Business. To be sure you ought to be considered. If there is any vacant place in yr Governmt Deserving yr or yr son's acceptance your Governor's Recommending you to the Duke of

[1] Lecky's "American Revolution," p. 8. Edmund Burke had already called this neglect salutary; see Walpole's "Memoirs of the Reign of King George the Third," II, 50.

Newcastle may be of service; but if you are recommended to the Duke for Him to do something for you, without telling Him and yr Frds Here, what it is no good. Such recommendation is only a thing of course and will all come to nothing. If your Governor is not a Courtier he is a Kin to those that are and Expectation of Something but nobody knows what is the extraordinary recompense they bestow on those that Serve them. I shall not be awanting when you have Really Something to ask that is vacant that will be of service to you and your Family in giveing you all mine and my Frds Interest."

At home, as we know, the assembly were still troubling. "There is another malicious paper printing from the Assembly," Colden informed his wife toward the end of May, "but don't trouble yourself about it. It can hurt neither the Govr nor me with any considerate person but evidently discovers what sort of men the Authors of it are and will contribute to bring all our Disputes to a more speedy conclusion. At the same time it makes me more desirous to be here when the News comes from England which we have all the reason in the world to expect cannot be long. . . ." "I'm heartily glad I've now found out A certain New Acquaintance's designs," wrote Rutherford about the same time, "while I looked on him as my friend and As I'm but too apt to trust I own he stumbled me a little, tho' I never could believe half his insinuations of your Character, your expressions of me & of your designs of keeping me & others at a distance from the Governour in order to have his whole ear. I hope and expect you'l now have as little regard to what he says on one side as I have on the other, for its plain his only design has been to create a difference, instead of which I dare say 't will have the quite contrary effect. . . . I wrote you in my last that discipline was at least as much wanted, but now unless we get Commanding Officers from home tis in vain to think of it, but while I write this perhaps the affair's all over. . . ."

It was shortly before this that the administration had been obliged to recall the prorogued assembly. "There is something unlucky in our public affairs to prevent my returning home," Colden sadly announced.[1] "The Govr is not well in his health & the troops are again mutinying at Albany even so far as to threaten to plunder the Country if they have not their whole pay. Till these things are settled it is so far from being proper for me to return that I am resolv'd if I do not see that things are like to be put into a better state at Albany to send for you & the children to this place. As to this, I hope to be determin'd in two or 3 days at furthest either by the Resolutions the Assembly should take or by news from England for we hear that a Packet lay ready at Porthsmouth for Boston & waited only for the Despatches to be sent from Court. The Assembly's last representation does them no service in this place & people are generally dissatisfied with it & I believe the Assembly will see that the people are so before it be long. The mutiny continuing at Albany has occasioned the Assembly to meet again upon Business." "I can assure you my Dear nothing gives me any kind of uneasiness but my concern for you," he wrote the next day: adding, "all the little malice which has appeared does not in the least affect me. I am as cheerful as ever as I know that events are not in my power and I hope to submit to them with a cheerful mind. This day a letter came from Mr. Harison at Philad[a]. that the Capt of a privater who was sent out to cruise on the coast writes that he had Spoke with a Ship boun on to Virginia who said he had parted with Admiral Warren on the banks of Newfoundland with six men of war and 40 transports."

"I have at last resolv'd," he said in a letter written nearly two weeks later, "to wait the return of an express which set out yesterday for Albany and is to return with all speed

[1] June 2, 1747.

after having made the Govr's resolution known of paying the whole on certain conditions which if comply'd with must put an end to all the disorders there and quiet the country for the future. And you must keep yourself and the children in readiness to come away for this place in case you have any account of the mutineers marching downwards from Albany for they have openly threatened to take their pay in plunder wherever they go and if once they begin such kind of work none can tell what other outrages they may be guilty of. The only doubt which now remains is whether they will entirely comply with the conditions proposed. If they do not the Governor cannot justify his paying them anything and certainly will not whatever be the consequence. I send Cad his commission and he must hold himself in readiness to go up about a week hence at which time he will receive his instructions & I expect to bring them myself and give him what further private advice may be necessary. The Govr has received an address from the Corporation of New York City with compliments to him on his Administration an account of which I expect will be in the newspapers & has made a good deal of talk in the Town being so very different from what comes from the Assembly. What is remarkable in this address is that it comes from the Magistrates chosen by the People annually and the Mayor who is appointed by the Govr went out of town and did not attend and they in the opposition made the Deputy Mayor drunk so that he could not attend the common Council at the time they had agreed to deliver their address. . . ."

The report of the express was such that, as has been said, the governor set out almost at once for Albany, Colden having left for home twenty-four hours previously. His vacation, however, was to be short. In less than three weeks the following letter from Clinton called him back to the fight: "I have had the devil & all to pay here with the new Levyes & Indians,"

he wrote from Fort Frederick on July 7, 1747. "As to ye first it was but last Monday that I could get the Captains into any manner of agreement Severall insisting that I had received orders from home to pay them, that ye first two months Musters was their due according for ye rules of ye Army & abundance more, Honeyman at the head, they are at last convinced & are preparing their Muster Rolls for payment, but when I sett out is uncertain, but intend as soon as possible I can in order to meet ye Assembly in order [to] engage our neighbours to drive ye French back," he continued, "& if possible to take or demolish Crown Point."

"Coll. Johnson came down last Thursday & with him Lucas, Moses & about 20 more Indians, who spoke to me ye next day cheafly insisting to know ye meaning why the Army is not arrived as I assured them last meeting, that I have drawn them into an Indian War & they did not see any Force I have to save them from being destroyed by their inveterate Enemies ye French & their Indians & a great deal more, which I was to answer on Saturday, but hearing Hendrick was coming down I deferred it to hear what he had to say & answer them at once, finding Henrick didn't come I sent an order to Captn Mackintosh to send a Guard with him & on Monday in ye afternoon he came with about 20 more, and yesterday morning I had about 30 of them in my little parlour just over ye Kitchen & a Monstrous hot day, they came about ½ past nine & did not leave me till nigh one, Coll. Johnson told me over night that Hendrick proposed to be very loud & speak very plainly to me, as if I had deceived them, upon Johnson & Stevens telling him it would not be proper before the others, he promised not, but to tell me my own in privatt, but after I delivered my answer, notwithstanding his promise he began and was exceedingly angry indeed & very impertinent & I was hardly able to bear him, he call'd upon ye Mohawks & told them I had drawn

them and him into ye War and that [when] he was come down to See ye Army instead of seeing, He found they were betrayed, that ye French no sooner proposed anything but they Sat about it, & then hit me in ye Truth of Sarahtoga & severall other things and our not making any head against this army, as for his part he would leave his Castle & take all his people with him, & so we parted in a sort of pett, I told him I was come up to settle the Army & to give him all ye Assistance I could & would have assistance from my Neighbours if I found there was occasion for it, but all did not signifie About six A Clock in ye evening Aeron Stevens came up to me to tell me Henrick wanted to speak with me in privitt. I told him as he had said in publick what he was to say to me in privitt I would have nothing to say to him but at last I thought it as well to hear what he had to say but ye scene was greatly changed for he was all good & we parted the best friends we ever was, and did everything but hug & kiss & he was quite sober as do them justice every one was, I was forced to fill ye Dog's pockett. They all leave now God be praised this afternoon & then I shall gett to my other affaires. I have given orders to Johnson to go directly to work to build a Fort at Canajoharie & this I ordered before Henrick asked it. . . ." "I have just received an Account that Connecticut Government has marched 400 men to their frontiers," he added in a postscript, " & New Hampshire 700 & Mr Shirley has ordered his Troops to assist us in case the Stroke should come this way, expecting ye same in return & particularly to assist ye Mohawks with Men & build Forts for them at ye same time is endeavouring to fling all this upon me, something must be done soon & it is absolutely necessary for me to meet ye Assembly to recommend tho' I Don't expect much, tho it is absolutely necessary for them to do something now or never, for we durst not pretend to send out any party unless a very strong one and we have not been able to get

any intelligence from Sarahtoga since these people went & most people are of an opinion that they are building a Magazine for Stores & Provisions for their sculking partys at carrying place. That what I have to say must require your assistance & I desire you will be at your son's house by the 16th inst.[1] when I shall call to take you in, it is unavoidable, I therefore desire you will not fail. . . ."

## V

So it happened that together Clinton and Colden journeyed back to the capital, where once more they were to oppose all that was influential in its political life, and of the two Colden was to be, as, indeed, he had been for more than a year, the responsible member of the administration. His contemporaries, friends and enemies alike, were agreed that he was the source of executive activity, and he himself could but know that he was held accountable for everything the governor said or did. If, therefore, he ever yielded to Clinton, who sometimes had opinions of his own and was stubborn enough in pressing their adoption, he did so at his own risk and must still be considered responsible. Moreover, he has left sufficient proof that he composed the governor's official utterances, spoken or written. Rough drafts of Clinton's letters to the Duke of Newcastle, to the Duke of Bedford, to the Board of Trade, and of his speeches and messages to the general assembly, are scattered familiarly through Colden's personal correspondence, written in Colden's neat, legible hand; while numerous allusions and directions and the identity in style between these letters and messages and the rest ascribed to Clinton during this period make their common origin certain. Not only the same ideas, but the same peculiarities of expression occur over and over again. For

[1] At Newburgh.

Colden believed in the virtue of repetition, and when month after month the conditions he was fighting remained almost unchanged, he found the old arguments perennially serviceable. That these would prevail in the colony without the aid of English authority he had by this time no hope, so powerful was the Delancey interest; but he trusted that such aid would come through the Duke of Newcastle. He thought to win the duke's support, furthermore, not so much through the Pelham-Clintons as through his own tale of persecuted loyalty and his picture of the probable result, should the persecutors remain unchecked. Hence, though he did not neglect the Board of Trade, his most intimate petitions were reserved for the restless eye of the Secretary of State. But for some reason it was to the Board of Trade that he had just written one of these with particular satisfaction.[1] For, besides the usual prayer for his own appointment as lieutenant-governor and the usual rehearsal of the situation, it contained a new suggestion for the solution of the New York problem. Delancey's commission, Clinton was made to say, could be withdrawn by mandamus under the signet and sign manual. Indeed, its validity was questionable. For, as in England, to change the tenure of an office required an act of Parliament, it was to be inferred that a legislative act of some sort was necessary to make a like change in the colonies. The change in the commission of the chief justice of New York, however, had been made by vote of the executive council only, on the governor's proposition. With little comment, Colden left these facts to make their own appeal.

But it was now time for action. At least so the governor thought, and he laid before the council certain letters from Shirley to himself, urging the appointment of a commission to arrange an attack on the French by the combined forces of New York, Massachusetts, and Connecticut. The council

[1] June 22, 1747, N. Y. Col. Docs., VI, 352.

expressed approval of such an attack, but, in order to save the time necessary for the organization of the commission, drew up a plan of their own. This included simultaneous assaults on the works at Crown Point and Niagara in early September, and Clinton was asked to inform the assembly that he proposed to put the volunteers into camp at once in preparation for an active fall campaign. He was also to request a subscription of £1400. But the assembly declared that it would be a breach of confidence to vote away the money of their constituents without further knowledge of the purpose to which it was to be devoted. To have satisfied them, Colden said later, would have made the proposed operations town talk in a few hours, Albany gossip in a few days, and familiar to the interested in Canada by the end of the week. Such a thing, he added, neither house of Parliament had ever asked. The assemblymen's curiosity, accordingly, remained unappeased, and on the 22d of August, 1747, Clinton laid a paper before the council stating that a despatch from Shirley had brought word that the king had abandoned the Canadian expedition and that Shirley and Admiral Knowles were to muster out the volunteers; that he could say nothing more, being enjoined to secrecy; that he had said so much only because he feared the frontiers would be otherwise left defenceless; and that, once and for all, he could no longer supply the Indians and the volunteers with provisions.[1]

The paper was referred to a committee, and meanwhile the council formally addressed the governor, begging him to reconsider the encamping of the forces, which had been posted north of the city of Albany, it being not yet a month since they had advised the encampment themselves. The governor passed over this annoying exchange of responsibility with some general remarks, but when Horsmanden came from the committee to ask him why he could no longer provide for the army, he replied

[1] N. Y. Col. Docs., VI, 667–673.

that he had spoken with sufficient authority and was accountable only to the king. As a matter of fact, Clinton had no good reason to give, though he afterward based his refusal on the presumption of the council in questioning his decision and on their outrageous carelessness as well. For, despite his exhortations to caution, they had ordered copies of his paper made and distributed to absent members and had met to discuss it at a common tavern. The committee then tried to get some information from those whom they described as "the Gentlemen having the honour to be most in his Excellency's confidence." But they proved elusive, and at length a report was compiled consisting mainly of a recital of the difficulties of its construction. Its manner, however, was insinuating, and it was full of open, if vague, criticism of the administration's policy. Yet there was much astonishment when, after it had been presented to the governor in council by Horsmanden, and before the governor had had time to put the question of its acceptance, Colden moved its rejection. This procedure was unprecedented, and during the debate that followed the governor was urged to follow the traditional rule. But he only said that he would consider it. This he was never known to do, and the report never got into the minutes. There seemed reason to many for saying that any report disagreeable to Mr. Colden would meet a like fate.[1]

The 1st of September was now come and nothing had been done except to appoint the commission suggested by Shirley. On the other hand, the Jerseymen in garrison at Saratoga were threatening to desert for want of provisions. The fort there, called after the governor himself, had been built by commissioners suggested to Clinton when he had been a complaisant novice in New York personalities. Wretchedly put together and poorly equipped, it had always been unpopular with the

[1] Committee of Council Report, August 26, 1747, in Colden Correspondence.

soldiers, and by the administration was considered to have been badly located. The assembly, on the contrary, pretended much fondness for it, though their refusal to repair it, resulting in Clinton's refusal to reënforce it, had been the cause of its almost complete destruction in November, 1745. It had then been rebuilt, with an even greater disregard for good workmanship, and now on hearing of its possible abandonment, the assembly besought Clinton to put New York volunteers, or even regulars, in place of the New Jersey deserters, themselves offering to furnish the necessary provisions. Moreover, when he did not reply at once, they repeated their request, whereupon the governor announced, as he had announced to the council, that he was resolved not to charge another penny to the crown and that he would not send the regulars to a place where the volunteers often refused to go, and where the expense of frequent reliefs was always necessary, so unhealthy and ill-equipped was it known to be. He did not add that he had told Colonel Roberts to examine it thoroughly and burn it if he found it untenable. But he had said enough to prompt a resolution to issue another representation, and though he would have given much to dissolve the assembly and so postpone it at least, he did not dare. For the much-discussed commission was at last met in the city and it required an assembly to hear its report. He could only gain a brief respite by adjourning the existing assembly from day to day, meanwhile flinging defiance at the cabal by suspending Horsmanden and Bayard from the council, and Horsmanden from his other government employments as well.

This deadlock was soon broken by the sad state of the Indians. During the summer Colonel Johnson had worked hard. "I assure Yr Excellcy," he had written on the 17th of July,[1] "I have done a great deal of service since I came home, having

[1] For these letters see N. Y. Col. Docs., VI, 386–391.

cleared up several points to them which has made all very easy, but chiefly abt our not destroying Crown Point, thereby to open a passage for them to Canada, which if done they say positively they would not leave a soul in Canada, but they would drive into Quebec and Montreal with very little of our assistance. I sent them home exceedingly well pleased, which is more than I expected could be done as affairs stand at present. I assure Yr Excellcy that they all promise very well and say they fear the failure will be on our side, for they are of opinion there will come more Warriors than we can supply or fit out; but I hope that will not be the case, if it is, then the Country was ruined." And on the 4th of August he wrote: "It is with much difficulty I can get time to lay Pen to Paper, having my house and all my outhouses continually full of Indians of all the Nations and more of late so than ever; there is not a day I can assure yr Excell$^{cy}$ but I am obliged to sit five or six hours in their Company to hear what they have to say, and answer them in every point, but my satisfaction is, I can say my endeavours are not in vain as I find there will be no failure or delay on their side. . . . The best and most trusty of the Six Nations have by my solicitation wrought strongly upon the foreign Nations. . . . As I must expect numbers upon this Call, it will be requisite that Yr Excell$^{cy}$ provide in time whatever may be necessary for their reception and fitting out for they all expect to be supplied by me as being their Rendez-vous." Ten days later he says: "I hope Yr Excellency in Council will consider what a loss I sustain by supplying Oswego at this dangerous time, being obliged to give double the money now to the Men as usually paid (since that murder was committed at Burnet's Field) which is the Road to Oswego. I could not get a man to go with the provisions for any money, therefore, have been obliged to get some Indians lately at any extraordinary price to carry some Battoes there but now can get no more of either Kind to go there without

a good guard." On the 19th he was at Albany to obtain the assistance of Colonel Roberts and Marshall in breaking up a nest of the enemy at Lake St. Sacrament, "from whence they daily send large parties among us who seldom fail of doing us mischief . . . to prevent which I am determined (with the general approbation of all the Indians) to march against them with about 300 Indians and as many Christians most of whom are volunteers. In case we should meet with no success, it will nevertheless satisfye the Indians, being chiefly their desire, it will also terrify the Enemy much to find such a number of men in quest of them. . . ." On the 28th he was "just setting off this instant for Lake Sacrament with 400 Christians mostly volunteers and about as many Indians here present besides vast numbers by the Road, who were met yesterday, by one of my people. He says for about 12 miles the Road was full of them . . . they have also as they tell me called upon all the Foreign Nations whom they expect every day; upon which I left some people at home to fit them out with what necessarys they require, and send them after me . . . what will be done with them all after my return, which will be in about 12 days at farthest, I can't tell, having nothing left of any consequence for them, what would be worse, to let such a parcel of fine stout fellows go back again without employing them further, wherefore I hope Yr Excell$^{cy}$ Council and Assembly will consider of it seriously before I return, otherwise I must assure Yr Excell$^{cy}$ there will be no living for me, or any one else in this part of the world, which perhaps the Gentlemen in that part of the Country may be easy at, as it seems to all people here they are, by their backwardness which, doubt not will be the entire ruin of the Country."

But, as we have seen, the three branches of the legislature were not considering anything from a common point of view. And in the first week of October, Johnson, accompanied by some

Mohawks, came down to New York in order to ask supplies for Indians who were actually starving. For a year, according to their promise made to the governor, they had hung around their castles, their hunting-grounds deserted, ready to be called on at any time. It seemed but just that they should be provided with what they had been prevented from providing themselves.

Therefore, once more Clinton addressed the assembly, asking for money for the Indians, for frontier forts, and for all the demands springing from the scheme of attack that the commissioners were forming. The next day he presented the scheme itself, and, though the commissioners had voted and Shirley had written his opinion that the Indian alliance still depended on the crown, he again urged its maintenance by the colonists. Two days later the assembly resolved to execute their part of the plan: to provide for the protection of the northern frontier; to deposit £800 in safe hands for the support of Indian enthusiasm; to give presents to the visiting sachems, though the fate of the governor's warrants drawn for that purpose was a mystery; to take part of the frontier army into pay, when it should be disbanded; and to send provisions to Saratoga. These resolutions were sent to the governor with a question. Had he, the assembly asked, complied with their request for the reënforcement of Saratoga? This was so far from being the case that in four days Saratoga was to be burned with his permission. But he said nothing of this. Instead, he burst into the following message: "By your votes I understand you are going upon things very foreign to what I recommended you. I will receive nothing from you at this critical juncture, but what relates to the message I last sent you; namely, by all means immediately to take the preservation of the frontiers and the fidelity of the Indians into consideration. The loss of a day may have fatal consequences. When that is over, you may have time to go upon any other matters."

This manifest breach of the rights and privileges of house and people, as the assembly defined it, met heroic treatment. As soon as it had been read, the door of the assembly room was locked and the key laid on the table, after which significant action, resolutions [1] were drawn up declaring that the governor's adviser "had attempted to infringe their rights, liberties, and privileges, violate the liberties of the people, and subvert the constitution of the colony and therefore was an enemy to its inhabitants." The next day the long-dreaded remonstrance was brought in, and, as Clinton afterward very truly said, in less time than it would have taken to read it over carefully, it arrived at the governor's door. According to Clinton, the committee who had it in charge rushed headlong into the room where he was sitting, one member at once offering to read it aloud; whereas the committee maintained that they had been announced by a servant with due ceremony. However that may have been, Clinton refused to hear a word, or even to allow the document left for his private perusal, and the assemblymen departed as they had come. But as, in the answer to the resolutions of the assembly on the commissioners' plan and the restrictive message of the 9th, the chief arguments of the remonstrance were met, the refusal to read it may be regarded as merely formal. This answer or message, and the remonstrance itself, are typical of the literary propaganda of the opposing factions, and their criticism will serve for many other effusions.[2]

The advantage of brevity appealed to neither of the two writers, and what wit there might be was lost in detail. But Colden's logic was stronger, his style more dignified, his sarcasm fresher. His repetitions are confined to statement and argument; the champion of the assembly rides his little ironies to exhaustion. The administration claimed, indeed, that the

[1] Journals, etc., II, 173. N. Y. Col. Docs., VI, 673–674.
[2] Journals and N. Y. Col. Docs., VI, 617–635.

assembly's fulminations were meant for simple people or people ignorant of American conditions; that they did not aim to redress grievances but to make Englishmen fear to take the government, at the same time bidding for the support of a considerable part of the population who had been bred in republican principles and in ignorance of the English constitution. The outburst in question struck at Colden specifically; charged him with the destruction of the harmony prevailing that memorable June when he had come to town; declared it to be a great misfortune that the governor had "fallen into such Ill Hands, that the Fate of this Colony should in this time of eminent Danger, depend solely upon the advice and caprice of a man so obnoxious who by the whole course of his conduct seems to have only his own interest in view without any regard to the safety or Welfare of the Colony"; and assured Clinton that many of his charges had no other ground than "the wicked imagination and invention" of his trusted confidant. The remonstrance then arraigned the governor for his course as commander-in-chief of the army; the contempt he evinced in his speeches for assembly and people; his short adjournments, involving loss of money and time; his jeers at the parsimony of the colony's representatives; and his own enormous expenditures. Finally, it openly declared its approval of an Indian neutrality, and affirmed that the relations between the Mohawks and the Caughnawagas made it absurd to think the Iroquois would ever fight the French with spirit, and that three French scalps and a few French prisoners were the only visible result of the famous treaty.

To prove that the administration was at least partly right in its claim that the assembly was not out for the redress of grievances, it is only necessary to compare this document with other remonstrances and petitions in which the representatives of a people have striven to right their wrongs. In comparison with

these it becomes mere petulance. The governor's speeches were full of angry scorn, but it was caused by the unexpected opposition of supposed inferiors; he had adjourned the assembly daily for weeks at a time, but only to ward off a public criticism of his administration which might first have been offered in private; he had drawn heavily on the crown, but it therefore belonged to the crown to ask an account; his military arrangements had not been faultless, but proof was lacking that the assembly's would have been better; it was exasperating to call men who had given £70,000 to further England's plans parsimonious because they refused to give what there was no reason for giving, but it was worse than exasperating for the assembly as a whole to oppose in public the administration's French policy and to affirm instead a policy acknowledged to be favourable to the Canadians. There might be little to show for the work of Johnson among the Indians, but, to use the argument of the doctors, no one could tell how much worse matters might have been without it, while it was the attitude of the council the preceding winter that had prevented the use of an opportunity which would have demonstrated its efficiency. With no great issues, therefore, at stake, it was a situation that called for common sense, but neither side wanted to change their point of view for a moment or to see how easily their difficulties might be adjusted were they but willing.

The governor's message, on the contrary, seemed designed to irritate. In Colden's stilted language Clinton gloated over the acceptance of the commission's plan, a plan closely resembling that which he with Shirley and Warren had formed, and they had rejected the previous year; he felicitated himself still more because the council at this late day had approved his scheme for frontier defence, and actually instructed the commissioners to build one or more forts at the carry; he reminded them gleefully that the year before these schemes would have been put

through by the crown. The insinuations concerning his drafts on the home treasury, he went on, were outrageously false, and their authors knew it; the House as a House was quite ignorant of the amount he had drawn, and the slightest curiosity could have discovered his expenditures. Some of these he mentioned, and then, in reference to the incredulity he had met with regard to the disbanding of the forces and to the assembly's importunity concerning Saratoga, he offered some information on his rights and privileges as commander-in-chief, incidentally scoring the jobbing of which Saratoga was a result. Finally, taking up the excited resolutions of October 9th, he asked some pertinent questions concerning their theatrical setting. "Why this farce?" he demands. "Was anyone trying to break in? Or did any of your members seem willing to run away? Surely this was not the case. Was it then, to assume power to shut me out? If so, it was a high insult to his Majesty's authority. But, Gentlemen, how by my message did I encroach on your undoubted rights and privileges? I told you what I would, or would not do, myself. Consider Gentlemen, by what authority you sit. You exist by virtue of the commission and instructions and yet you seem to place yourselves upon the same foundation with the House of Commons of Great Britain, and if I mistake not the resolves of the 9th assume all its rights and privileges. If so, you assume to be a branch of the Legislature of the Kingdom and deny your dependence on the Crown and Parliament. If you have not their rights, the Giver of your authority can bound your rights at pleasure and I must now tell you that I have his Majesty's express commands not to suffer you to bring some matters into your House. . . . In short, Gentlemen, I must tell you, that every branch of the Legislature and all of them may be criminal in the eyes of the law and there is a power able to punish you and will, if provoked. . . ." Colden had been preaching sermons of this sort for nearly twenty years

but never to so large an audience, and the desire to improve the occasion to the utmost was irresistible. Still he was only speaking vicariously, and it was necessary to return to particulars. The disrespect that had been shown one of his station and family, the governor concluded, should be passed by, but never again would he receive their proceedings in public unless they had first been presented to him in private, never again would he sign a support bill that did not conform to his commission and instructions.

The moral of these papers is evident. So far had the legislature secured for itself executive functions that it was almost independent. What the governor still did he had to pay for without its aid. Thus, neither had much hold on the other, and relief was only to be sought in mutual recriminations, fruitless because it was unnecessary to support them with proof.

The assembly, it will be remembered, had promised to retain some of the volunteers after their dismissal by the crown. When, therefore, Clinton sent down a message requesting provisions for detachments of militia which he proposed to send to the frontier, the members, making no attempt to learn the reason for this determination, expressed their astonishment at such vacillating policy and at the same time explained it by the governor's connection with Colden. Clinton replied that he had not been informed by the speaker of the terms on which the soldiers were to be retained, and had since learned that the officers were to receive half pay only, while neither officers nor men were to receive arrears. Therefore, as it would be impossible to get fit commanders at wages below the ordinary recompense of a day labourer, he had considered the use of the militia the best solution of the difficulty. It was they who were responsible for his change of plan, their refusal to advance the army's back pay on the king's credit was reprehensible, while the free expression of their sentiments certainly seemed in-

tended to produce a bad effect outside. The assembly retorted that he had known their intentions from the beginning, and though they confessed that he had disapproved, they said he had promised to do all that he could to make the best of what he considered an unwise arrangement when the time for mustering out the volunteers should be set. They therefore repeated their surprise at his asking supplies for the militia before the publication of this date. They must consider this proceeding not only a mark of vacillation, but a proof that he did not want them to retain any of the levies, and rather wished that the frontiers should be left unprotected. For, in this event, he could call out the militia and thus add to the people's burden.

This whole incident furnishes an example of the mistaken policy of the administration. Shirley and Knowles had said that the home government had directed them to ask the colonial governors either to continue their drafts on the crown, or to request their assemblies to advance the necessary amount for settling the obligations incurred at Newcastle's orders. No exception, therefore, could be taken to the New York assembly's course in this regard. They had merely refused the recommendation and confined Clinton to the other alternative. Their remarks concerning the militia, on the other hand, were dangerous and merited serious attention, yet the two issues had been so closely associated that the one received the careless consideration the other deserved. Indeed, it was almost superfluous for Clinton to offer a suggestion or state a fact, and at this time a widely quoted sentence from his last letter to the Board of Trade was destroying what little influence he may have retained. A governor could not write home: "I can justly say that the expense of the colonists in North America in proportion to their abilities is in no manner adequate to that which the people of England cheerfully submit to in defence of the liberties of Europe,"[1] and hope at the same time to meet with much

[1] Clinton to the Lords of Trade, September 27, 1747.

sympathy in his difficulties. And even when his fears of the effect of the assembly's rhetoric were shown to have been justified, there was general indifference. On the 9th of November the militia in New York City were summoned to their parade ground on the common. Their line of march was past the governor's house, and Clinton with his little daughter was watching them from one of the windows, when a private wheeled halfway round and presented and then fired his gun at the two spectators. Yet his captain, a member of the assembly, merely looked back and laughed. When, moreover, the men arrived at the common, and their officers read aloud the governor's orders, they unanimously refused to stir a step without an act of assembly. And they refused with impunity.

The militia having thus eliminated themselves from the situation, and the assembly having decided that the retention of the king's volunteers was hopeless under the circumstances, they voted to begin afresh and raise eight hundred men for the protection of the frontier. They also passed a bill for a magazine of provisions at Albany, and sent it to the governor, at the same time requesting him to issue warrants for recruiting the colonial volunteers. But Clinton would receive neither messengers nor vote unless they were accompanied by the speaker. He might better have done so. For his refusal met instant retaliation in the publication and distribution of the remonstrance. This was in direct defiance of the governor, whose order to the printer and all whom it might concern to let the remonstrance alone had been published in the *Gazette*. He was powerless, however, to enforce it, and after receiving a formal address from the assembly, which besought his assent to a provisions bill before the winter set in, he yielded. Affirming his disapproval and his determination to keep up the struggle for constitutional forms, on the 25th of November he signed a bill for the purchase and transportation of army rations and one raising £2800 for the

protection of the frontier. At the same time he dissolved the assembly in a bitter speech, which recited again the events of the session.

This was a double defeat for Colden. Not only had he tried through the governor to force the situation, but in the council he had used every argument to defeat these bills and others that had been equally successful. But he was alone in his stubborn resistance, and his protests could only satisfy his conscience. Yet considering the nature of the government, his objections were only reasonable. When commissioners were named to purchase and transport provisions for the army, he moved an amendment that their disposition be given to the governor or the commander-in-chief. But he was voted down. When it was resolved to pass over the revenue from the new tax to commissioners, who were to pay the eight hundred volunteers, issue their provisions, and buy their gunpowder and lead, he dissented because the money was to be issued without the governor's warrant, and because the method by which the bills were to be cancelled was open to fraud. When commissioners were named to make a statement of the colony accounts from 1713 on, he dissented because the nomination of such commissioners belonged to the governor only; because wine and merchandise were the chief source of the government income, and the merchant commissioners were interested persons; because the statement was not to be binding and it was possible to infer that the members of the assembly were to be perpetual auditors of the public money; because the proceedings of the commission were unregulated; because the statement was to be published in the newspapers; and because the salaries of the commissioners were to be perpetual. Finally, when it was resolved that certain commissioners should cancel certain bills of credit, he dissented because they were nominated and were to be paid without the governor's cognizance; because certain bills were to be

cancelled in place of certain others, thus disturbing the financial balance and possibly leaving bills uncancelled after their period of circulation had expired; and because no evidence of the cancellation was demanded, thus enabling the commissioners to pocket the bills and bring them out again when they wished.[1]

A session of more than three months was now at an end, and yet the attack on Crown Point was not appreciably nearer nor were the difficulties of the administration appreciably diminished. But there was no time for regret, as the approaching election called for the energy of all good partisans. It was clear that a word of English authority in favour of the governor and his friends would have much to do with their success. Hence the letters to Newcastle began to say openly that the confidence of the opposition could not but be increased by the silence so carefully maintained by the ministry. The letters also asked favours by which the administration would be strengthened, notably, the suspension of Philip Livingston from the secretaryship of Indian affairs and from the council; and the substitution on the council board of James Alexander for Horsmanden; of William Johnson for Stephen Bayard; and of Brandt Schuyler for Philip Cortland, who had died. But the man whom every one wanted to propitiate was Sir Peter Warren.

Warren's transformation into a cosmopolitan celebrity had not made him the less a colonial. He considered New York, where he had established his family in fine style, to be his permanent home, and was quite willing to promote the interests of his American connections, and, in particular, was doing all he could to satisfy James Delancey's ambition to become lieutenant-governor. Under the circumstances, it was superfluous for another candidate to bespeak his favour. But the circumstances were not generally known, and when Colden wrote to

[1] N. Y. Col. Docs., VI, 680–682.

congratulate him on his latest achievement, he said: "I am sorry that I cannot send you accounts from this part of the world that can in any manner correspond with the actions with which you have fill'd all our newspapers. It is to be feared that everything from America will appear too much otherwise except what has been done by your nephew Colonel Johnson, who by his Negotiations & Interest with the Indians has exceeded all our Expectations & has with indefatigable labour & pains don as much for the safety of the British Colonies in North America as any one man in them. It is with pleasure I think that I have been of some use to him, but otherwise as to my own part, I am heartily sorry that I have been obliged to have any share in the publick affairs at this time & which I pray you'l give me leave to tell you was far from being my own choice. My thoughts were entirely formed upon another plan. . . . You know sir the men and Manners of the Country. I am in some measure known to you let me beg of you not to lose any esteem you had for me till you are assured I deserve that punishment by acting contrary to his Majesty's Interest or the rules observed by men of honour and while I do so I hope to have your favour continued. . . ."[1]

## VI

THE old assembly had been dissolved, but a new one was to be elected, and when Colden returned to Ulster in December, 1747, it was not to rest but to work hard for the administration candidates. He was not, however, interested in the local nominees alone. Political literature from the New York presses was circulating everywhere in the towns and was even finding its way to farmhouses and country taverns. Consisting for the most part of lampoons and doggerel, more serious

[1] November 26, 1747.

arguments were occasionally attempted. "A Letter to the Governor by several Assemblymen," for instance, so dramatically pictured the wretched condition of the people of New York, ground down by taxes to defray the cost of the war, that Colden was asked to reply to it in detail. This reply, however, did not reach the city until after the election, and meanwhile Colden conducted a campaign of education from his Ulster headquarters. His "Address to the Freeholders and Freemen of the Cities & Counties of the Province of New York by a Freeholder" is one of the best of his political papers. He goes over the whole case, of course, but he discards his worn-out phrases and employs a lighter style. Especially does he attack the opposition's habit of assertion without proof. "On this occasion," he wrote, "every one must remember that Rumour and Report was a Fine Engine to throw dirt upon a Governour. But we who are not assemblymen may think it as proper an implement against assemblymen's commissrs. If rumour and report be a sufficient ground to charge a Govr why has it not some force to charge when rumour and report is as strongly against them. There has been a rumour and report that considerable quantities of Beef and Pork was so bad that it was condemn'd as unfit to be eat yet this cost the Country with good. Rumour and Report affirm that several barrels of Bread had good bread at both ends and in the midle what was only fit for hogs and yet the middle cost the same price to the Country with the best. Rumour and report told us that the men were cheated out of one quarter of the rum allow'd them and paid for by the Country. And Rumour and report positively affirms that very considerable quantities of the Countrie's Provisions has been sold at Auction and converted to Private use. May I ask how it comes that Rumour and Report should be of such Credit against a Govr & deserve no notice or regard when it is as positive an evidence against assemblymen

and their Creatures. After this he must be a mere simple David indeed, who can believe that the abusive language which has been vented against Govr Clinton was only to prevent embezling the publick Treasures. What other purpose it was to serve the Assembly has not thought proper to own. But as it does not require any extraordinary Sagacity to discover it I shall leave it to enquiry of the Electors of New Assemblymen. They must be little acquainted with mankind who can think there could be any great danger from the power of a Governour when they who are subject to his power dare treat him in the manner Govr Clinton has been treated. . . ."

"All deviations from our Constitution," he said further on, "must either proceed from the ignorance of the Beauty of it or from a desire to destroy it. But in all attempts of this kind the people of this Province have something more to fear than independent States have. Every endeavour to wrest the King's Authority out of the hands of his Governour may draw on the Resentment not only of the King but likewise of a British Parliament who allready seem to have become jealous of the Dependence of their Colonies. Witness a Bill not long since prepared for Parliament which alarmed all the Colonies.

"If this should be the Case that the Parliament should think that we abused the Privileges with which we are indulged and should think it necessary to put us under a more absolute authority, We the common middling people are most likely to suffer. These very men who by their grasping after undue power endanger our greatest Privileges may escape the punishment while the innocent suffer, for those fondest of power are most likely to be its tools that they may be gainers by it. . . . Some perhaps may say that these men have been fighting the Country's cause against the encroachments of a Governour, &, therefore, should not be deserted but supported by their country. But if what has been before observ'd be well considered I suspect

strongly it will appear that these violent opposers of a Governour have had their own private Views more at heart than the good of the Country. Consider seriously my Dear countrymen whether in the late public Dissentions, Love of worldly power, Profitable employment in the Disposing of the Country's money, Foolish and mischievous Contentions for little paltry posts and Distinctions, do not too evidently appear to have been the principle motives. . . . Till of late I could not believe the Story of him who refused to pump in a sinking ship because one on board whom he hated, would be saved. The next Argument which I have heard insisted on for the Re-election of our late representatives in the County especially is that they are all of them men of the best estates in the County & consequently must be firmly attached to the Interest of the County where their Estates lie. To this I answer we have others of as good estates as they have & who have not had their Judgments byassed & their Passions exasperated by having been personally engaged in our wofull dissensions. . . . I must further observe that riches are not allwise acquired by the honestest means nor are they allwise accompanied with the greatest integrity of mind, with the most knowledge or the most generous public sentiments. . . .

"In all countries and in all ages the middling rank of mankind have the reputation of being generally the most honest. The estates of the middling rank are as dear to them as the estates of the richest are to them. At the same time they of a middling rank must allwise be more cautious of making an ill use of any good qualities they may be possessed of than some rich men who know the force of money and powerfull or rich relations to screen them from particular enquiries into their Conduct. Now my Dear Countrymen never was there a time wherein we ought to be more carefull and more disinterested in the Choice of Representatives than now when this Country

as I at first observ'd is exposed to the two most dangerous Enemies that any Country can be exposed to The French & merciless Indians. And when we may be likewise exposed to the resentment of our King and a British Parliament by the Indiscreet & passionate behaviour of our late Representatives in a manner which I am sorry to say may be thought disrespectful of all Authority & of our dependence on Great Britain. This I think highly concerns us to remove every Jealousy of this kind from our Superiors because we can have no defence against it but by removing it, which I doubt not may be easily don by the prudent behaviour of our next Assembly. For which purpose let us unite heartily & sincerely in the choice of such as we are persuaded know the interest of our Country & are most resolute to pursue it without prejudice and view to party Interest or to the Satisfying their private Views Passions or resentments." [1]

But even apart from his interest in the elections Colden's public responsibilities had followed him from the city. Clinton needed the support of a stronger nature, and, though he realized that Colden had not helped him much, he could lean on no one else, at least for the time being. Therefore he leaned on Colden still. The unfortunate governor was convinced that the opposition was gaining ground in the city, he feared that the assembly would refuse to accept the amendments made by the Massachusetts General Court to the commission's plan for the attack on Canada, and he was generally concerned at the overtures of certain of the enemy to one of the best of his few friends. Above all, he was sadly puzzled at the complexity of his position, and would have given much to be able to settle everything by a fair fight in the open. Instead, he stormed and blustered one moment, and made some clumsy attempt at diplomacy the next, but always with a suggestion of helpless uncertainty

[1] The Colden Correspondence contains a copy of the address.

that was almost pathetic. On one of these milder impulses, in anticipation of the coming assembly, he wrote to Coldengham for an "agreeable speech."[1] He wanted one, he said, that would show his people that he had no malice at heart, and to this suggestion Colden gave his approval, though probably with regret. "I have no copy of the agreement [between the commissioners]," he replied, "so I cannot judge of the amendments made at Boston, but I believe the Assembly will be puzzled in either agreeing to the Amendments or in refusing. The taking of Crown Point is exceedingly popular & they may risque their popularity which they have so much at heart by refusing to consent to the Amendments unless the reasons for refusing be very apparently sufficient. . . . On the other hand, I am persuaded that the Assembly will find themselves under such difficulties in the execution of the agreement that they will gladly get out from it if they can. . . . This may give Yr Excellcy a handsom opportunity of Exposing the obstinacy of the Assembly in refusing to retain the new levies on the terms Your Excellency proposed. My humble opinion with submission is that Your Excellency should present this affair only in general terms . . . because I believe it will be hardly possible to extricate themselves from the difficulties which may arise in their resolutions & therefore perhaps, they might be glad of finding some new disputes."[2]

Clinton's depression, however, was too well founded to be cheered by the optimism of a man so far away. He could only repeat that he felt completely stranded; that the Rutherfords had actually been invited to meet the Delanceys; and that he, or Colden, or both, had been attacked in a document sent home on the last ship. Yet, when Colden, at the close of a letter transmitting the speech he had written for the governor, said

[1] January 2, 1747/8.
[2] January 10, 1747/8.

quite casually that perhaps the public business would go more smoothly without him, his probably light-hearted suggestion was accepted with suspicious promptness. "I have now a new scene to open to you at which I am greatly moved," wrote Clinton on January 31, 1748. "The day before Yesterday Waddel arrived from London and brought me a Notification from ye Duke of Newcastle that Chief Justice Delancey was appointed Leut Governr of this Province and by a letter from Sir Peter I find it was obtained by his means who has insinuated so far to His Grace that we are on good terms & by means of a Defamation which has been lodged agst you in England by their Faction and their Party here, which has succeeded so far that I am wholly disapointed in my Expectations of what I was confident I could secure to you. I persuade myself you think I've done you justice in that Respect, as you had the penning of the recommendations which I transmitted to His Grace On yr behalf. The Commission is to be with me till I think proper to diliver it in order to keep him to his good behavour and I find by his Discourse he has directions from home to assist me and to make things easier. The Assembly is to meet soon. I shall have a triall of his Conduct with them. My Leave of Absence is come over but I have fixed upon no time as yet for going, nor will I leave the Province before I see you in some way or other secured from the Resentment of Yr Enemies.

"In the meantime you may depend upon my Endeavours of doing you all ye Justice Imaginable with his Grace in Vindication of your Character. I approve of ye hint you give me & perhaps ye publick buisiness may go on more smoothly in your Absence for some time And shall dispence therewith till I see how ye Chief Justice intends to proceed nevertheless you may depend on my Endeavours to serve you & any of your Family for ye services you have done me. I shall write more

fully by your son. A ship will go in a fortnight for London & anything you have to say in your own Vindication to His Grace or Lds of Trade I will take care it is delivered but let it be as short as possible . . . but what I fear most is that Sr. P. bribes . . ., that my letters are not delivered & that Leut. Gover[nr] Clark has had a share of giving Characters but whiles there is Life there is hopes. . . ."

If this unexpected acquiescence in his continued absence annoyed Colden, he did not let Clinton know it. "I must own that I was moved with the account Your Excellency gave me," he wrote, "but when I consider'd how much more reason Your Excelly had to be moved I thought it became me to bear any disappointment with patience. Upon cool reflection, however contrary to expectation this event may be yet now it has happen'd I do not think there is anything surprising in it. The Duke's time is so exceedingly engaged in affairs of greater importance that he can have little time to reflect on our publick affairs. The opinion he may have of Sr Peter may easily incline him to favour a proposal by which Your Excellency was to be made easy & the Duke himself freed from trouble & this the more likely to happen while he was not fully informed of what has happened in this Country.

"However this may be your Excelly is not thereby reduced to any necessity of making compliances unbecoming you. If you please to read over the powers granted Your Excellency by Your Commission you'l find you have power sufficient to rectify everything & if Your Excellency should return to England the past proceedings will justify your Excellency with the most severe judge. I have many reasons to think that the generality of the people are not pleas'd with the change. Many openly speak their Sentiments & I believe many are of the same opinion who . . . do not care to speak. . . .

"However this be I hope your Excellency can never comply

with the most dishonourable part of the worst terms that can be offered that is of restoring the infamous scribbler to any power of exerting his malice otherwise than by his vile pen which must soon want ink if Your Excellency do not enable him to go on. . . . As to what relates to myself I entirely depend on your Excellency's honour. . . ."

Meanwhile, on February 12, 1748, the assembly had met. The news of Delancey's appointment had been rushed through the more accessible portions of the province on the eve of the elections, and, for this reason, or because others had not worked so heartily as Colden, almost all the old members were returned, and Jones was once more speaker. This gave Clinton an opportunity to prove the sincerity of the popular leaders. It could now no longer be said that his policy from day to day was dictated by Colden's ambition, and, freed from this excuse, the real issues between governor and assembly could easily have been defined. But he did not force their definition. James Alexander, under whose influence he now came, was not a politician. In the enthusiasm of his young manhood he had, indeed, firmly opposed the arbitrary methods of a succession of governors. But he had opposed because he felt that the rights of the people were threatened. His reward was suspension from the council, and now he found himself, years after, advising a governor who was in hostile relations with the very men he had himself fought in his youth. But whether other interests had brought indifference, or whether he could not easily sympathize with the representatives of a government which had so carelessly misjudged him, he counselled oblivion, conciliation, submission. "I am sure," he wrote to Colden, "I would rather Chuse your present State with a very moderate Subsistence than the fatigues you underwent for a year before with a thousand a year laid in the Scale with them;" [1] and for

[1] March 29, 1748.

his part he did not propose to fatigue himself unnecessarily. The assembly were not so magnanimous as to take no advantage of this policy. Therefore, when Clinton asked their assent to the alterations in the commissioners' plan that had been suggested by Massachusetts, they promptly refused to accept them. The alterations, they said, would defeat its purpose. When Clinton announced that Newcastle had written that the crown would pay for presents to the Indians, and keep any fort the colonists might take, they only expressed approval and promised to pay commissioners to make further arrangements. And when Clinton urged their concurrence in a joint expedition once more, they said they could do nothing without the promise of assistance from the governments to the south, though some time before they had given informal assurance of their coöperation should the English government guarantee the maintenance of their conquests. On the other hand, they gained the governor's assent to various bills on the old lines; they forced his acquiescence in the appointment of an agent at St. James, merely by inserting his salary in the salary bill; while they secured £150 for Horsmanden, ostensibly for drafting certain bills, but really, it was said, for writing libels on Clinton himself. Not that Clinton was entirely passive. He wrote home begging the ministry to listen to nothing from the agent unless authorized by him, and he never failed to tell his council what he had thought of a bill. But at Alexander's suggestion, he took their advice as he had always been supposed to do.

Of these proceedings Colden was kept well informed, for Clinton had by no means done with him. He, however, was not sitting idle in the hope of a recall. Rather, he was exceedingly busy picking up the threads of a scientific life. "I knew the chances that attended the Game," he wrote to a friend in New York. "I am not sorry nor can I blame myself for any part I had in it . . . and you need be under no difficulty in writing fully

of occurrences the bad as well as the good for I am return'd to my Philosophy." On the other hand, he was not indifferent to the repair of his reputation. He wrote a long personal appeal to Newcastle, and in the letter enclosing it to Clinton, suggested that it was perhaps illegal for the same person to be at once chief justice, chancellor, and lieutenant-governor.[1] It was his opinion, however, that Delancey would make Horsmanden chief justice, and then actually try for his own appointment as governor. But Clinton assured him that the astute leader of the opposition would never part with certainty for hope. "I have lately discovered," he went on, "the Spring of all my disappointments in England by Mr. Charles (upon whom I depended) acting in confidence with Sr Pter Warren; and nothing surprised me more yesterday than the Speaker asking me if I would consent to the giving an allowance of 200 pounds to an Agent in England for the Service of the Province, and named Mr. Charles to me as recommd by Sir Peter."

Another spring was passing. The instructed commissioners of Massachusetts and Connecticut had been ready for months to meet those of New York; the crown was generous; the assembly voted rangers here, blockhouses there, provisions for some other place; Colden wrote an excellent argument for the employment of the Indians in French wars. Yet no one had the ability or the desire to push the one thing worth doing, the capture of Crown Point; and Johnson was gloomy at his people's idleness, while a warm invitation they had just received for a summer visit to the French governor made counter-attractions immediately necessary. Colden thought the general indifference due to a desire to throw the burden of failure on Clinton. "In my opinion," he wrote, "what Chiefly concerns your Excellency at present is to remove everything which has been laid to your charge. . . . In my Opinion it is impossible to save

[1] March 21, 1748.

your Excellency's honour if Mr. H—n be thought worthy to be employ'd in places of the greatest trust after the publication of such libellous papers as have been printed & of which no one doubts of his being the author. Every man that reads them must conclude that either your Excellency or the Author of these papers is not worthy to be entrusted in any publick service. The C. J.[1] by his behaviour in this principally must give the most evident proof that he is your Excellency's friend or that he is otherwise." [2]

Clinton was equally desirous of seeing Colden reinstated. He wrote to the Duke of Bedford, who had superseded Newcastle, of the trials and risks Colden had undergone in the service of the crown,[3] and he wrote this time untutored, while he interested himself heartily in putting the surveyor general's office beyond the reach of his enemies. "I really believe," Alexander wrote,[4] "that Govr Clinton is a very friendly man and would do you any Service that Lay in his power, for he sent Mr Catherwood to me to tell me so, and that if I could think of anything to serve you he would readily do it, and mentioned something of what you now write."

Clinton's natural good nature may well have been the cause of his interest in Colden, but it must be observed that on Colden's departure Delancey had shown no desire to return to the old intimacy. In fact, no attempt whatever had been made by the opposition to fill the empty place, and Clinton felt this keenly. "Nothing can show plainer ye good intention of ye Noble Assembly," he grumbled,[5] "then their last days vote where they appoint a Committee to assist their Speaker & correspond with their Agent and the orders then made (though I suppose them to be ready) I believe were put in after I had adjourn'd them. I have sent it to ye D Newcastle & Lords of Trade desiring

[1] Chief Justice Delancey.
[2] April 9, 1748.
[3] N. Y. Col. Docs. VI, 428.
[4] April 17.
[5] May 16, 1748.

they will receive no mamorial or representation from Mr. Charles but what I assent to, and have also writt to Guerin (his agent) full instructions about it. I have also given him orders to go to Mr. Stone and talk it over, and since that have given Major Rutherford the speech I made to ye Assembly when I dissolved them the second time to prove it false what they have said that we alwayes agreed before you was prime Minister as they terme you. . . . Mr. Shirley . . . proposes to come to New York in June to go with me to Albany which requires some consideration & our meeting and a good occasion offers at present you being appointed as president of ye Council to swear me as Adml of the White as you will see by the inclosed . . . this will touch the C. J. home for he always used. . . . I had some design of coming up to be Qualified at your Son's but have talked with Kennedy since & we think better for you to come down for the other will be acting as it was in privitt, I have therefore told him but I have received no Compliments. . . ."

Clinton was not to meet the Indians till July and in a ten-days' session of the assembly in June he made one more attempt to arouse some enthusiasm for the capture of the famous French fortress. But the good burghers only expressed astonishment at his mentioning such a thing when Massachusetts had refused to ratify the agreement, an audacious shifting of responsibility that might well have been challenged.[1] But the governor had himself well in hand, and an obvious endeavour to pick a quarrel that followed found him even conciliating. "The Chief Justice is making all the mischief he can," he wrote Colden, "as you may see by that Fool Beekman's motion but I have Quelled it to his great disappointment; He is going up and Murray and of course for no good, which will make it absolutely necessary for me to have a friend to advise and consult

[1] Journal of the Genl. Ass. of N. Y., II, 241.

with. I therefore desire you will be ready at your Son's the Eighth of next month. Mr. Kennedy goes up and must insist on yr not failing me. . . ."

## VII

THE real success of an Indian conference required time for its proof, though the presence of the largest number of Indians ever seen in Albany at once and their enthusiasm at the brilliancy of the king's presents was at least gratifying. But the meeting had one immediate result. Thrown into intimate personal relations for the first time, Colden and Shirley frankly evinced a mutual liking and respect, which Clinton observed and turned to his own profit. Clinton's interest in England was good, or he would long since have been recalled. But it was a purely personal interest. If he was to be supported, it was from favouritism, *esprit de corps*, family feeling, and not because he was right. Shirley, on the contrary, had a reputation for excellent judgment, and his confirmation of Clinton's conception of the case would count for much. So when he stopped in New York for a few days on his way home, Clinton asked him, with the assistance of Colden, to make an inquiry into the gradual revolution that was being worked in the constitution of the province. He was to send his conclusions to the ministry, but he was also to educe from his investigation a plan of action for Clinton, which that weary administrator gladly promised to follow. Shirley, however, decided later that it would be improper to send his report directly home and sent it to Clinton instead, with authority to use it as he saw fit.[1] He had not found that the population of the most cosmopolitan of colonies was being exorbitantly taxed, in order that a small army of placemen might gamble and drink their claret at Brooks', though a

[1] N. Y. Col. Docs., VI, p. 433 *et seq.*

prominent historian affirms this as the typical condition of the colonists.[1] Instead, he proved from the records, that it had been the custom through Cosby's time to grant a governor in the name of the king first a five and then a three years' support bill, or civil list, of which at first only the salaries of treasurer and assemblymen were appropriated; that then the whole sum granted was appropriated, but informally, by a vote; that next it had been granted annually; and that finally it had been appropriated in the bill and to officers by name, instead of to the offices, a contingent sum being reserved for the assembly only. And this, though one of the governor's instructions forbade the expenditure of moneys raised by the assembly in any other way than by warrant of the governor and council. Clinton had disregarded it, first on Delancey's advice and then through necessity. But now that the war was over, both Shirley and Colden were confident that with the coöperation of the home government the old order might be restored, though Shirley advised the continued appropriation of salaries to offices by the assembly as a compromise. Letters asking assistance were at once despatched to England, and, pending results, Shirley urged Clinton to recall Colden, summon the assembly, and, with Colden's help, tell them his intentions.

Though a man of action rather than of theory, Shirley's conception of the New York situation was as academic as Colden's own. Indeed, he apparently ignored its two chief factors, the unpopularity of the surveyor general and the power of the Delanceys. Old Stephen Delancey had arrived in America less than twenty years before Colden, but by his quickly acquired wealth and the use he made of it, by his commanding personal qualities, by his own marriage and the marriages of his children, he had established before his death, in 1743, an unrivalled influence. This influence his eldest son

[1] Trevelyan's "American Revolution."

bade fair to strengthen. Debonair, witty, unscrupulous, connected through his wife and his sisters and brothers with almost every man of prominence in the colony, he knew how to hold and employ them all, whether they admired and agreed, or disapproved but feared his tongue, or dreaded the social hostility of his family. And what he could not get by tolerably fair means his rake of a brother, "fat Oliver Delancey," was quite willing to get by any means whatever. On the other hand, Colden had returned to Scotland to marry, and though he had a Delancey son-in-law himself, besides a number of good friends in the Delancey set, he was as little a part of the social fabric of the town as though he had never come back. Stern and uncompromising in demeanour, he kept his kindlier manners for his intimates. Never having aspired to lead men, but, on the contrary, having longed to drive them, he had neither studied their prejudices nor the arts of persuasion. He could never have formed a party had he tried, and he never dreamed of stooping to such an attempt. Nor had the Clintons helped to make a social background for the administration. Mrs. Clinton, a handsome, frivolous woman, with pretensions to political influence, had no taste for provincial gayeties and preferred the society of the young naval officers on the American station to exchanging visits with the wives of councillors and assemblymen. Clinton himself was often indisposed, and the family spent much time at their Flushing country house. It was even said that the governor was only seen in church three or four times during his administration, and to many of the people his face was unknown. Such indifference was resented by the sociable population, and when Oliver Delancey presumed to court an affair with Mrs. Clinton, and was promptly snubbed for his presumption, his outrageous remarks and actions failed to rouse the indignation they deserved.

Under the circumstances, Shirley's advice seems fatuous.

But he only knew the Colden whose political acumen won the praise, and his political sufferings the sympathy, of the keen-sighted Franklin, who, indeed, was but then counting on a correspondence with him as not the least of the pleasures his proposed retirement from active life would afford. Colden's own reluctance to return to politics was considerable.[1] But the prospect of being permitted to handle assembly aggressions by the method he had advocated for the last quarter of a century proved too much for his prudence, and when Shirley added his solicitations to Clinton's he yielded, though only on condition that Shirley share the responsibility of the governor's speech. Clinton, also, was somewhat nervous at the prospect, and his letter of summons is not distinctly flattering. "I have adjourned the Assembly till the 20th Inst," he wrote Colden on September 7, 1748, "and intend for a fortnight longer . . . , but I hope you will come sooner to settle some affaires that will be very necessary before Catherwood leaves this place. . . . Our London ships are arrived Poor Majr Ruth went home in a bad time for himself & us, just upon ye peace & everybody going abroad or on partys of pleasure Inclosed is Horsmanden's Petition. I think I never read a more fulsome low thing in my life it will be well to have some answer ready. . . . The Degrading intirely the C. J. is the thing I find Sticks & I fear will prove absolutely impracticable unless I can exhibit & maintain substantial articles of accusation agst him, and the more so as its a doubt whether ye D of Bedfd will reverse an act of his Predecessor's without some very cogent reason. I think what we have is quite strong but if we can make it stronger ye better . . . for which reason have refused absolutely an offer of a Man-of-War to come to New York to carry me and my Family home. . . . In order to bring things to some pass I am beginning to make a thorough change in ye county of Albany.

[1] N. Y. Col. Docs., VI, 459.

. . . I have agreed on Johnson for Recorder but this not to be known yet. . . . A Hint of some sort would not be amiss that the C J has absolutely refused assisting in any shape which I think might be made good use of to fling ye blame on him for yr coming down. . . ."

As might have been expected, the session was a repetition, with no enlivening features, of former encounters between administration and assembly. Viewed impartially, the governor's speech was sufficiently restrained and irritating only to those who could read between the lines. It was with some asperity, however, that the consideration of Johnson's accounts was requested, as well as Canada's failure to agree to fair terms for the exchange of prisoners. The latest advices indicated that such was the demoralization of the French that the proposed attack would have been successful, and the administration was correspondingly annoyed at those who were responsible for its abandonment. The main feature of the speech, however, was a demand for a five years' civil list impersonally appropriated. In making it a reference to the misleading counsel Clinton had received on his arrival was considered necessary, but this was scarcely adequate cause for the passion of the address voted in reply. Clinton's new demands were flatly refused, and the failure of the Canadian cartel was as flatly charged to the low character of Clinton's envoys. Had salaries been granted to offices, and not to the men filling them, the address asserted, the governor under the unhappy influence of his mentor, would have filled the office of third justice with some unworthy person in place of a gentleman of experience and learning (Horsmanden). This gentleman, it proceeded, had been removed for no misconduct whatever, under the sole influence of so mean and despicable a character that, as the general assembly had occasionally remarked, it was astonishing the governor could still give

him his confidence. When Clinton told the assembly's messengers, who had come to ask when he would receive this document, that he had not yet seen a copy and could only answer them when he had done so, they gave him one on their own responsibility. But its perusal called forth a message which, while it repeated the demands of the speech, expressed the refusal of the governor to receive such an indecent performance and offered to do its authors the honour of referring it to the king. With no contingent fund, the governor said, the Canadian envoys were the best he could get on the slender credit of the assembly, and were usually men obliged to go north on business of their own. "You are pleased," he concluded, "to give the Characters of some Persons that I have had better Opportunities to know than you can have had; however, I believe that by this paper [the address,] some Men's Characters will be very evident to every Man who shall read it and who has the least Sense of Honour." [1]

Both sides were now in excellent form and the assembly retorted without delay. It was irregular and unparliamentary, they resolved, to send a copy of the address to the governor, and he had no right to insist on it, for it was their right to see him on public business. When he denied them access, it was, therefore, a violation of his right and contrary to his solemn promise to the speaker made on his presentation. Indeed, it not only tended to destroy intercourse between governor and people, but to subvert the constitution, and he who had advised it was an enemy to the general assembly and to their constituents. This was the language of principle, but it was in the voice of faction, and, however necessary might be its enunciation in the ears of a people who were to be self-governing, it does not ring true. Despite the governor's refusal to receive it, moreover, the address had been entered on the minutes, and this appeal to the

[1] Journal of the Genl. Ass. of N. Y., II, 248.

people, when he had offered to make the king the umpire, was especially attacked in his answer to the resolutions. It was his duty, he further observed, to preserve the king's authority, and when they violated the rules of decency they must bear the consequence. Besides, their right of access was not universal, but conditional on the interest of king and public, of which he had a right to judge as well as they. And then, although no disposition of the year's revenue granted to the king had been made, failing which not a penny could be touched, he prorogued them to the spring.

Not much, certainly, had been gained for the prerogative, yet the very fact that Colden had been recalled had made Delancey uneasy, and losing for the moment his easy command of the situation he had attacked him personally and with the bitterness of an uncertain position. On the 24th of September, just before the assembly met, Clinton had announced in council that the provisions for the frontier forces would last but a week longer, and that he had reason to believe that if more were not provided by that time, the soldiers would disband. When this information was conveyed to the speaker, he said it was too soon to break up the army, and several assemblymen in town agreeing with him, the council advised the continuance of the rations until October 21st. Clinton, accordingly, sent his private secretary to a commissioner of provisions to request the necessary orders to the commissioners in Albany. The commissioner, a Mr. Richards, was reported to have acquiesced, but in a few days word came from Albany that the commissioners had refused to issue more provisions, as they had received no orders from New York. Mr. Banyer, the deputy-secretary of the province, was sent to ask an explanation. Mr. Richards said that he had never promised anything, and that, on consultation, his colleague had refused to consent to any action not mentioned in the act appointing them. He also said, in reply to a

question from Mr. Banyer, that he would disregard even a written order from the governor, as it was not worth while to send such a small cargo up the river anyhow. This conversation Mr. Banyer reported to the council in detail, and had scarcely finished when Colden moved that Mr. Richards's refusal be put on record. But Delancey interrupted with a motion for the transcription of the whole report, and Colden not supporting his own motion, it was lost.

A few days later still, the council were considering a letter from Clinton to the governor of Canada. A paragraph seemed obscure to the chief justice, and he asked if any one present could explain it. This Colden attempted to do, but its meaning still proved baffling, and Colden was moving that the clerk make it intelligible when Delancey exclaimed significantly, "We must guard against misrepresentation." Colden demanded his meaning. Delancey said he felt his warning necessary because "Mr. Colden had discovered a most flagitious and wicked mind in Council" on the day when Mr. Banyer had reported his interview with Mr. Richards. Colden asked that this charge be put on record. Delancey, in what Colden afterward called a threatening manner, repeated his assertion and offered to write it out at once or bring it to Colden the next day. A few more hostile expressions were exchanged, and the meeting broke up. But the controversy raged on. Colden appealed to the governor to require an answer from Delancey, and intimated that this was not the freedom of debate of which the instructions spoke. The governor ordered Delancey to reply. Delancey responded by criticising the management of the verbal duel by the government. He had not, he said, been summoned to the council the day Colden's memorial was presented, so that the valuable time of a Supreme Court justice had been spent in writing what might have been spoken as well; he had been told to make his answer to the governor instead of to the governor in

council, as was proper; the council had not advised this order to him, and he was not obliged to accuse himself. He did say, however, in order "to show his willing temper," that when Mr. Banyer was describing Mr. Richards's refusal, Mr. Colden interrupted, "That is enough, set that down," he himself protesting "That is a very unfair method, to take down part of a man's testimony." As for his inference from this, the chief justice begged leave to state that, as he had a very mean opinion of Mr. Colden, and as his character was notorious, he had imagined his remark to spring from depravity of heart, and was filled with just indignation, the expression of which he failed to see had in any way affected the freedom of debate.

In his reply to this plain-speaking document, Colden said, with truth, that Delancey had made an issue of unimportant details; that as the case was without precedent, errors were probable; but that it would have been clearly improper to summon Delancey or himself as judges in a case where both were parties. The point was, had Delancey justified himself? Had it been decent to obtrude his "mean opinion" right or wrong? If it had, Colden said, "it might be easy to retort by giving an opinion of Mr. Chief Justice." He did not know, he concluded, what Delancey meant by his epithets, but he did know that he had endeavoured to lead a life giving no just cause of offence; that his chief pleasure had been to employ his abilities for the good of mankind; that the sole cause of Delancey's resentment was the transfer of Clinton's confidence; that he himself, on the other hand, had never resented Delancey's temporary enjoyment of that honour, though it was his by right; and that, once his, he had never used it to the hurt of any man, but had put the best construction possible on Delancey's behaviour. While the final statement was oratorical license or an unconscious tribute to his own best intentions, it is nevertheless evident that, had Delancey been able to indict Colden for any concrete offence,

he would have done so. But he doubtless deemed his inability to do this his greatest misfortune, and Colden could surely hope to gain nothing from his enemies by proving his own virtue. He still hoped for official approval, however, and as official approval was to him the final test of service, he went up to Coldengham for the winter less depressed by his position than might seem possible.

## VIII

One thing was certain. It was more necessary than ever to wring some expression of opinion from the ministry, if the administration was to accomplish its purpose. But the last ship of the year, like its fellows, had come in without an official word. Colden had not waited for this, however, and once more had besought Bedford in his own behalf, because, he said, the governor feared the cry of favouritism that would go up if he himself should speak for Colden.[1] This he soon did, nevertheless, and Delancey's attack and Colden's fair record were touched up with friendly zeal. He was sure, he added, that it had never been intended that he should deliver Delancey's commission if he considered it against the public interest, and he proposed to hold it back for instructions. Colden had urged more radical action. It was his plan that Clinton should summon the chief justice, give him his commission, swear him in as lieutenant-governor, and then suspend him, and he had considered every emergency, including Delancey's possible refusal to give the governor his opportunity.

"Your Excellency must have observ'd," he wrote, "how difficult it is to get his Majesty's ministers to think of plantation affairs . . . & therefore that they may not come to any determination in a long time, which must produce greater inconvenience to your Excellency than any termination whatsoever even the

[1] N. Y. Col. Docs., VI, 469.

contrary to your Excellency's expectations. For this reason may it not be proper to do what is in your power to do because, as Knowles observ'd, it will be easier for your Excellency to get a thing don to be approved than to get others to do it. And it will oblige the Ministry to take the matters Your Excellency has laid before them immediately under consideration or if they do not it will be a tacit approbation of what Your Excellency has done. . . . If Your Excellency do not do this, will it not be naturally askt what is the reason that you are affray'd to do what is in your power to do and which you represent as so necessary to be done. . . . May not this give some credit to the vile calumnies which they otherwise could not obtain?" [1]

Clinton longed to follow these suggestions, but he quailed before the possible consequences. "I do assure you," he replied, "I shall do what we had under consideration before you left me and have given Catherwood orders abt it in case I do it that they may not be Surprized, & have told him to let them know I did it affraid, if any accident happened to me, of the ill treatment my Wife of course must expect from him; before I do it it will be very proper to have a letter ready for ye D Bedford, Lords of trade & President of ye Council with reasons of so doing When I do it I must expect to meet with all ye opposition & Quirks that the Law can invent to puzzell things therefore it will require that I shoud have upon ye spot all ye Assistance that I may want. I must desire to hear from you as soon as you can for as Mr. Alexander is out of town I have none — Catherwood is but just now going on board. . . ." "I expected you would have said something in answer to ye latter part of my letter," he complained on the 3d of January, 1749. "Hope you are considering what is proper & to guard against the worst especially any Quirks of ye Law, . . . They grow very insolent & particularly Oliver that I sent a Message to ye Attony

[1] December 8, 1748.

Genl ye other day that in Case he did not prosecute him as far as he could carry it upon my order I woud turn him out but I am at a great Loss how to fix it properly that I may be in ye right in order to push things to as great length as in my power."

Colden, on the other hand, began to see some reason for encouragement. A certain Colonel Herrick, who had been, as the puzzled governor insisted, "as violent in the Assembly as any," had actually broken with the faction, and Colden was so convinced that he was "a sincere convert" that he induced Clinton to make him a county judge. "I am," he wrote happily, "pleased to find that those persons who so very lately thought they had an universal influence are brought so near upon a par with their neighbours. . . . As to matters of Law or Quirks in the Law I cannot advise you otherwise than this that you would please to send Dr Ayscough or Captn Clinton to Mr Alexander to desire him to come to you some day before noon that you want his advice & opinion in a matter of Law & I cannot doubt of his waiting on Yr. Excellcy. . . ."

But Clinton was not to be put off like this. Though the proclamation of peace had reached the colony in the late summer of 1748, no copy of the treaty, no instructions, had followed it, and the governors of New York and Massachusetts Bay must fence with the dexterous governor of New France as best they could. The Frenchman's aim was to force the Iroquois to go to Montreal to make a separate treaty, as, indeed, had been customary, and to this end he sought to circumvent Clinton's efforts to exchange or purchase those who were taken prisoners in the war, on the ground that they were not British subjects. Nor was he unaware of the factional fight in New York, where the assembly was playing into his hands by making it as difficult as possible to secure skilful envoys. In questions of this sort Colden was invaluable and Clinton tried again.

"I received a letter from Coll Johnson this morning," he wrote early in February, "he wants to know abt getting ye Prisoners from the English Indians. I thought that part had been settled. . . . We must expect to meet with all the rubs they can give with Malice [on] what we wrote to ye Governr of Canada. Therefore, I think it will be highly necessary for you to come downe immediately. . . . I therefore don't send for Alexander till you come down . . . Mrs. Clinton with her compliments thinks that it is absolutely necessary for you to come In short, Oliver has frightened ye poor Mayor that I can't get a Sight of him that we are only Two and two at present in Council and their wants a little Spirit to keep up theirs for Self Interest prevails more than I could ever expected to have seen. . . . I have this moment an account bro't me that Oliver is going to England, let him go. I will answer for it that I have done his business. . . ."

It was nearly time, too, for the assembly which was to meet in March, but Colden was immovable. "I am much concern'd that the present state of the weather in this season of the year is such that it renders it impossible for me to shew my obedience to Yr Excellency's desires," he replied.[1] "The express that brought yours . . . never found such difficulty in travelling with continual danger of his horse tumbling, besides this I have been so much in a warm room this winter that I cannot expose myself to the cold lodgings that cannot be avoided travilling, together with the cold in the day without the greatest danger to my health at an age when I am become too sensible of the impressions of cold & therefore I must beg your Excellency to excuse my waiting on you till such time as I can do it by water when I can take conveniences with me to guard against the cold. . . . In the mean time I shall endeavour to give my opinion in the matters which are the subjects of Yr. Excellency's letter in such

[1] February 9, 1748/9.

manner as to make up as far as possible any inconvenience that may attend my absence. I am of opinion that Coll Johnson must take the care of procuring the Indian prisoners for several reasons. 1. No one is so capable of doing it. 2. No other I suspect will be willing to undertake it. 3. If any other . . . fails it may occasion blame in employing another. I think likewise that . . . as he undertook the management of the Indians during the war it is his duty. . . . But I suspect the greatest difficulty . . . arises from the expense . . . and . . . some may think it necessary to call the Assembly. But I am of opinion there is no necessity. . . . Your Excelly has informed the King's ministers that you cannot meet the Assembly of this Province till you know their resolutions on the matter you have in dispute with the Assembly . . . for till his Majesty's pleasure shall be known it may be difficult or perhaps impossible for you to behave consistently with yourself or the orders you may afterward receive from the Crown. We know not upon what terms the prisoners are to be sent back perhaps it may not be entirely upon the Conditions Yr. Excelly proposed or perhaps they may not all be relieved from the Indians, in both which cases delay is reasonable. Supose the terms Yr. Excelly proposed . . . are entirely complied with, your Excelly must be allow'd some time to treat with the Indians, and in case you should fail, this can but very little affect the affairs of this Government after all our prisoners shall be released without which you are under no obligation. It can only occasion a complaint from the Govner of Canada. . . . Several expedients may likewise be thought of to make matters easy. The Indians may be tried how far they will be satisfied with promises of future rewards or other like methods. . . . Mr. Lydius may be sent back to engage the Relations of those who have been prisoners in Canada to advance money for the release of the French who are in the hands of our Indians as being a condition on which their

relations are to be released and that they ought to trust the Assembly for the repayment of this money. If this be resolved on Mr. Lydius must keep it entirely secret otherwise they who endeavour to embroil affairs will certainly defeat it. . . . As to what Your Excellency may think it necessary to write to England at this time I shall enclose a sketch of my thoughts thereon in the words which I think may be proper to be used but with submission, however, to what alterations or abridgements which Your Excellency shall think proper. On this occasion I must take the liberty again to put Your Excellency in mind not to direct your letters to Mr. Catherwood only least he should miscarry nor do I think it prudent to put the whole of your affairs in the power of one man to suppress what he pleases. . . . Yr. Excellency will see from the enclosed Sketch that there is a brief recapitulation of what has been formerly said, this is don with design to keep things in memory & from a belief that great men do not readily turn to former papers if reference were made to them & different expressions of the same thing may sometimes be of use. . . ."

This refusal to come to New York, for some time at least, seemed final, yet little more than a week later, the governor's new private secretary renewed the attack.[1] "His Excellency being much indisposed," he wrote, "So orders me to acquaint you that Mr. De Ligneris & 23 others with Captn Stoddart are come down & only two of our prisoners. . . . The Govr of Canada is still inflexible, and has sent this Embassy to treat for Exchange of Prisoners. On the news of the Frenchmen coming down, some malicious persons made it their Business to insinuate that not one farthing would be paid by the Assembly, so that I was forced to engage for his Excellency for the payment. By this you will observe the absolute necessity [of] your Advice & Assistance at this Critical Juncture, for in that

[1] February 18, 1748/9.

they cannot make a Council, Coll Moore and the Mayor being both ill. . . ."

Current events were not, indeed, enlivening. A few days before Oliver Delancey—already under nominal prosecution by the crown—and some of his friends, all in disguise and with blackened faces, had broken into the house of a respectable Dutch Jew, smashed the windows, flung open the doors, and pulled everything to pieces, because Oliver was pleased to declare that the man's wife looked like Mrs. Clinton. Yet three of the best lawyers in the province refused to take the case, and advised the Jew not to fight it out on account of the position of the defendants. On another occasion Oliver had met a poor man on the road, ordered him to stand still, and when he hesitated to obey, had broken his head.[1] Yet the man had no more success with the lawyers than the Jew. Indeed, with an infirm and indifferent attorney general, a chief justice leading a faction, and a second judge devoted to his chief, there was reason to fear that justice would often yield to expediency. There was, besides, something pitiful about the governor's position that Colden was not fitted by nature to appreciate. When the Clinton administration was only a memory, Colonel Choat, of Massachusetts, said to William Smith, of New York: "Mr. Clinton was of all others the man we would have wished for our Governor, for he would have done anything for you within his commission for his bottle and a present."[2] Yet this man, to whom argument was a horror, was obliged to endure a war of words waged in his name and round his head for years, until he was insulted in the streets, while even his personal sufferings met no recognition but the prescription: "Give him plenty of wine and Colden, and he'll come out all right." He was sick of it all, but he could only call once more for the adviser who was quite likely

[1] N. Y. Col. Docs., VI, 471.

[2] Smith's "History of New York," II, 158.

to make him fight, as he himself shrank from fighting. His summons was also once more ineffective. "The cold is so severe that I cannot be one hour in it," Colden told the anxious governor on February 19th, saying farther on in the same letter: "Your Excellency in all publick treaties will consider the Interest of the Nation in general more than of this Province in particular & much more than the Sollicitations of private persons. . . . I am told that when Oliver was at Esopus he gave out the Assembly was to be dissolv'd and solicited the election of particular persons. He brought up all the songs and factious papers with him read them in the tavern & talked as he uses to do. . . . I know not what has put the apprehensions of a Dissolution into their heads unless (as is given out) they find that their interest lessens in the City of New York. If there were reason to hope that one man in the city could be removed & another in Queen's County, I would hold up both hands for a dissolution. Nay if we were sure of a hearty strugle in the city tho' nothing should be carried I should not be displeased with it. . . ." And again Ayscough writes, this time on the 3d of March, when the winter was surely near its end: "His Excellency . . . is much concerned that you are so much indisposed, . . . that you could not have taken the opportunity of the River being open to have come down. . . . Mr. De Lignerises party have been now here sixteen days, & no progress made . . . at a great expense to somebody. Where it will fall I can not determine; & you may naturally suppose the Malicious grumbling, carefully propagated by the designing Faction, who will lose no opportunity to calumniate his Excellency's measures. Therefore . . . he orders me to press in the strongest terms I can possibly do it, that if your health will permit which I hope in God it will that you would immediately take the very first offer to embark for New York, for I must beg leave to repeat it to you, that I am certain you were never more

wanted; for which reason I earnestly beg you for God's sake not to fail. . . . Last Tuesday his Excelly prorogued the Assembly till the second Tuesday in April. . . ."

Nevertheless, Colden stayed in Ulster and the assembly was prorogued once more. And though early in May Ayscough wrote joyously that Catherwood had announced the recall of Delancey's commission, the approval of Horsmanden's suspension, the rebuke of the assembly, the presentation of a memorial to the king by the ministry in favour of Governor Clinton, and the arrival of Sir Peter Warren on the next ship, so disgusted that he had resigned his commission as admiral, some one had been too sanguine and the news was never confirmed. In fact, there was no news of any kind, and it was in desperation rather than from any hope of success that the assembly was at length permitted to organize in the last week of June.

As it happened, the town was already in a state of vast excitement. Three days before Oliver Delancey, Dr. Colhoun, one of the governor's friends, and others, had been sitting in the taproom of a tavern in the dockward when Colhoun and Delancey began to quarrel. Delancey said he had objections even to being in the same room with any one so dependent on the governor, and then flung a whole vocabulary of epithets at Clinton, and, Colhoun remonstrating, flung them all over again at Clinton's friends, begged any one or every one to report his words to the governor, offered bribes to any one who would, and told Colhoun that he expected to repeat his performance in all companies for the rest of his life. He next went home, sent a messenger for Colhoun, got him into his house alone, assaulted him, and was just prevented from killing him outright. Colhoun finally recovered, but, during the session of the assembly and for months thereafter, the problem of dealing with Delancey increased the burden of the administration. The examination of witnesses took the attention of the council from more important

matters, and Clinton even hoped that popular disapproval of one brother would diminish the prestige of the other; when the chief justice, with his usual *finesse*, openly declared his abhorrence of Oliver's behaviour.[1]

## IX

MEANWHILE the assembly had been opened in a manner that did credit to both Clinton and Colden, the latter of whom was again commanding the government forces in person. The members were presented with a copy of that part of the commission and instructions concerning government finance, and then the governor, in a dignified speech, asked them to act accordingly without a reference to any other subject. The commission declared it to be the royal pleasure that the public income should be issued on the governor's warrant, given with the advice and consent of his council, for the support of the government; the fifteenth instruction directed that no excise act should run for less than a year, and that all other supply and support bills should be indefinite, except for temporary services; while the thirty-second instruction was a practical repetition of the financial clause in the commission, adding permission, however, to the assembly to examine the accounts of revenue raised by virtue of their acts.[2] The administration, therefore, had taken an impregnable position. But it was not held long. Colden literally could not see what he considered to be the law broken without a protest, even though the protest was certain to be ineffective, even though it obscured the main issue and provided the opposition with a grievance. Therefore, when the assembly offered to present their address, the governor refused to receive it until he had seen a copy. The assembly resolved unanimously that

[1] Proceedings of the Executive Council; N. Y. Col. Docs., VI, 513–515.
[2] Journal, etc., II, 250.

he had no right to insist on previous copies. The governor retorted that the king always had copies of parliamentary addresses, and that the practice had been adopted in the colony; that he had a right to know, because he had authority to restrain; and that, since their messengers were with him before ten o'clock in the morning, when they had not met to consider the address until after nine, he had good reason to suspect that he was to be surprised into receiving something improper. And then, having said all this, he admitted that he had seen a copy in the minutes brought him by the clerk and gave them permission to present it.[1]

This was bad management indeed, for the assembly had shown their weakness by disregarding the governor's one point, the irregularity of their financial system. Instead, asserting generally that the instructions were more ancient than modern, and that even in their antique provisions nothing could be found about a grant of revenue for five years, they vowed that "the faithful representatives of the people" would never yield more than an annual support bill, while they asked an explanation of the delay in exchanging the prisoners of war and blamed the governor for proroguing them the previous autumn, before they had applied the revenue. The message sent in reply is one of Colden's most characteristic productions, from its opening comparison between the governor's charity and the assembly's vindictiveness, to its closing exhortation to contrast the lot of the English colonist with that of the Roman or Dutch, and then give thanks. The governor asked the assembly to consider the bill brought into Parliament at the last session attacking the paper currency of the colonies and enforcing the royal instructions. Its debate had only been postponed, he assured them, and meanwhile it was desirable that they remember that it was an essential part of the constitution that the same branch of the

[1] *Ibid.*, p. 262.

legislature should not both issue and grant the revenue, and that in rewarding private persons for services of which he knew nothing by means of riders to the support bill, they had pre-empted a privilege unassumed by Parliament. In particular, moreover, he complained that Colonel Johnson was unpaid, that the bearers of the last flag of truce to Canada were in the same condition, though the assembly had voted to settle their accounts more than a year before, and that they had deliberately misconstrued his speech.[1]

A repetition of the preceding nonsense followed. The message was received. The assembly drew up an answer. Clinton refused to receive it for the same reason as before, then saw it in the votes, and at last accepted it. The assembly still insisted that Clinton had asked for a quinquennial grant, though his denial of such a demand might have been taken as a regret for having made it even if he had, and said that the services he had mentioned had remained unpaid because he had not presented the accounts. Then once more his crimes were rehearsed in order to show the absurdity of comparisons between himself and the king. The services for which grants were made were always mentioned in their bills, they affirmed, while Parliament often provided for objects not mentioned by the crown. On the other hand, they admitted that certain sums were set apart for the king's own disposal, but they reminded the king's representative that a king's interest was identical with his subjects', while a governor was usually a grasping stranger whose stay was uncertain, and from whom no redress could be expected. By this time there was no hope of anything save more fighting, and when the governor followed the last address by a sufficiently sane request for one law, one object, and for the use of titles for laws germane to their subject, the House broke into enraged resolves. They affirmed their right of access to

[1] Journal, etc., II, 267 *et seq.*

the governor and the enmity of his principal adviser, and they refused to proceed until satisfied for the injury done their address. This being refused in turn in a message of the 20th of July, it was unanimously resolved that the message was unsatisfactory and a breach of privilege, and after a two weeks' deadlock the assembly was prorogued to a distant date.

It was now nearly two years since any appropriation had been made for government expenses. Yet Clinton believed that, while he was unable to get at a shilling of the revenue, and even had to pay out of his own pocket for the gunpowder of which he made patriotic use on the royal anniversaries, the speaker was in the habit of drawing on the treasury for the services of the faction by private order of the House. And he had some reason for his belief. For when during the deadlock Colden had asked certain leading men if it would not be possible to raise the sum necessary to ransom the prisoners and satisfy the Indians by private subscription, he was promptly assured that it could be done in a day. But as soon as the faction heard of this scheme, they pronounced it dangerous, and the speaker proposed instead that the House privately deposit the required amount in the hands of responsible persons to be designated by the governor. His choice, however, was restricted to members of assembly living at Albany and he refused the offer, proposing in turn that the treasurer should come to the council, as if voluntarily, and offer to pay their warrants for an amount to be named by the House. But the speaker considered that this would prove a bad precedent, and the administration felt obliged to comply with his proposition, exasperating as such necessity might be.[1]

Clinton's situation, indeed, seems almost incredible. The chosen representative of a powerful nation in one of its largest colonies, he had now for three years been engaged in a bitter

[1] N. Y. Col. Docs., VI, 524 and 536.

contest with the people he had been sent to govern. This contest, full of personal animosity though it was, had early developed into an attempt, on the one hand, to uphold the dignity and power of the government, whose spokesman and administrator Clinton was, and, on the other, to curtail its effectiveness almost to the point of extinction. It is preposterous that that government should not, unasked, have declared its position in all those passing months. Yet, so far was this from being the case, that it had not spoken, though it had been implored, times without number, to say something even if it were a word of disapproval. And every one in the province knew this to be true. Surely if ever government threw away whatever hold on a colony it may have possessed, that government was England and that colony was New York. Colden, fully alive, of course, to the situation, sought relief to his emotions in the following letter to Shirley: "The honour you do me by yours of 26th of last month wherein you are pleased to give me Your Excellencey's approbation of my conduct in assisting Govr Clinton fully compensates the injuries received. . . . I have often said my character had been established from the Slander of a few Malicious men. . . . Their Malice . . . as to my character has not the least effect with men of sense. . . . On the contrary it has been often said these People establish Mr. Colden's character. . . . But notwithstanding of this if wicked men should succeed by the basest & most dishonourable means to the highest offices in the Government what effect must this have on people's minds & manners? As to this I can give you a flagrant instance there is not a man of this town who knows O. D. & is not persuaded that he rail'd at Govr Clinton & abused his Character & conversation in every company wherever his name or the publick affairs have been mention'd & yet Philip Vanhorn, a constant bottle companion of his & present when the dispute happen'd with D. Colhoun, on his examination before the Council on his oath . . .

said that he did not remember ever to have heard Oliver DeLancey speak disrespectfully of the Govr. . . . But their greatest hopes . . . are in the Nemine Contradicente resolves of the Assembly & from the Opinion they have that the ministry will think it prudent to comply with the humours of the People in that they may think that man the most capable to restore the Government who has had such power to distress. You know what kind of creature an American Assembly is & yet you cannot have a sufficient Conception of the Ignorance & the mean spirit of the Dutch members here. Most of them . . . of the lowest rank of Artificers. . . . It requires but a small degree of artifice [Colden was assuredly innocent of any attempt to pun] to make them believe the greatest absurdities of a Governor & I durst undertake that if 4 or 5 men were not in that house & others in their place to have all the Nem Con's on the other side . . . men not engaged in the public disputes love their own quiet. . . . But if it shall once appear that the Chief Justice's Interest is not sufficient to support him in the measures he has taken and that the King is resolv'd to support his Prerogative in the Plantations the publick affairs in this government will soon have a different appearance. . . . I have been near 30 years in the Council of the Province . . . & in all that time do not remember any publick money was drawn by any Govr & applied to any other use than what it was design'd for by the Assembly that granted it except for the Perquisite which the King's Auditor of his revenue claim'd and you know Sr what influence the Govrs were under at that time to make them do this. . . . If Govr Clinton had made use of his power in drawing the least sum out of the Treasury contrary to the intent of the Grantors it cannot be doubted this Assembly would have pointed it particularly out. . . . On the contrary I am persuaded that of the publick money more has been converted to private use since the Assembly assumed the sole power of issuing it than has been don in any

shape by all or any of the Governors since I came into this Province. . . .

"It may deserve the attention of his Majesty's Ministers that Virginia is the only Colony with a perpetual revenue for the Support of Government. . . . I hear of no complaints in that colony of their Governour or of any complaints the Govr makes of the People whereas great complaints are heard in every other colony of the one or the other or of both.

"I believe a future Assembly may be brought to consent to have the publick money issued by warrant as formerly but I doubt that any will consent to a revenue for years far less to a perpetual revenue because thereby they must lose that power & influence on a Governour that every man is fond of. But I am of opinion that his Majesty's Quitrents of Land in this Province if properly regulated would be more than sufficient for the support of the Civil Government. . . . Yet if Prosecutions in Chancery [the reform in the land system he has been suggesting] were set on foot in this Province where the Govr is Chancellor such clamour & jealousy would be rais'd as might have bad effects. Therefore I am of opinion that the most prudent Method would be by application to Parliament.

"About the year 1726 I sent a Memorial to the Board of Trade wherein the State of the Quitrents is more particularly set forth & which was so much taken notice of by that Board that on what was represented in it an Act for Partition of Lands in this Province was disallowed & repealed by the King.

"But any information of this kind I now make will be attended with such resentment as I choose to avoid & I believe I feel to this day the effects of that memorial and hence I must beg that nothing from this appear as from me in the publick offices. . . . There are some in this Province capable of everything that Cæsar Borgia was.

"The office of Chief Justice has more influence in the publick

affairs in this Colony than can well be imagined. No man that has any Property can think himself independent of the Courts of Justice, however carefull his behaviour in life may be. There are in this Colony numbers of Lawyers who's business & fortune depend on the Countenance of a Chief Justice. . . . When then a Chief Justice puts himself at the head of a Party in this Colony he becomes as formidable at the head of the Lawyers as the Popes formerly were in the days of ignorance at the head of the monks and friars. . . . Chief Justice Delancey told me in conversation which was overheard by others that I would find that a Chief Justice has more power than a Governour. . . .

"I am told that Sr Peter Warren has advised Coll Johnson no longer to assist Govr Clinton in the Indian affairs & to decline all publick business. . . . The Faction hereby hopes that the Indian affairs will return into the old Channel of the Comrs at Albany. . . . I've heard that Coll Johnson has recommended Mr. Lidius Secretary for Indian affairs but I doubt of his being to equal his task. In my opinion some person of known prudence should be imploy'd . . . with a sufficient allowance to support him . . . & to reside at Albany. This officer to be immediately under the direction of the Govr of New York but to correspond with all the neighbouring Governours. . . .[1]"

Colden certainly found enough to annoy and distress him, but it is probable that his own temperament saved him from seeing the delicate irony of his position as some saw it. It will be remembered that Delancey had early encouraged him to make the worst of himself in any given situation. It was now believed that, in fear lest Clinton should leave before the delivery of the lieutenant-governor's commission, and horrified at the prospect of seeing Colden take the chair as president of the council, the resourceful chief justice was actually inventing situations

[1] July 25, 1749.

to rouse Colden's indignation and move him to bore the ministry to the point of disgust. It is Smith's opinion, however, that Clinton now began to realize that he had been the victim of the clashing aims of Colden and Delancey, and that from that moment Colden's power was at an end.[1] In fact, Clinton had long felt that Colden's influence did not make for peace and had begged his assistance from necessity as much as from choice. Yet, now that such necessity was removed by certain new connections of the governor's,[1] his assistance was sought as before, and if his presence was no longer continually implored, it was not reasonable that Clinton should continue to ask it after so many refusals when he had more than a single resource.

The governor's new friends were William Smith, the historian's father, and Robert Hunter Morris, the son of the old colonel. Smith had been out of politics since Cosby's time, but when Clinton offered him the attorney generalship, provided royal confirmation of the appointment could be obtained, he accepted it, and from that moment devoted himself to the establishment of harmony between the legislators and officials of the colony. Clinton's relations with Morris, who was chief justice of the Jerseys and a member of one of the few prominent families hostile to the Delanceys, had at first been merely social. But it took but a few fishing excursions to show each how the other could be of use. Morris, who was on the point of sailing for England to push the Jersey boundary that the Delanceys were opposing, wished to be lieutenant-governor of New York. Clinton wished to present a memorial on the state of New York to the king through some influential colonial. Smith says that Clinton agreed to further Morris's candidacy, while Morris promised to take charge of the memorial, and that it was decided to leave Colden in ignorance of his rival's scheme, as his assistance was necessary in getting up the memorial itself. Yet

[1] Smith's History, II, 129.

Clinton continued to favour Colden in his letters home, and it is almost impossible to credit him with sufficient duplicity to say one thing and write another when so much depended on it. At any rate, he got what he wished. "Govr Clinton," Alexander wrote on September 25, 1749, "has bespoke . . . passage for Chj. Morris . . . who does not propose to sail till the middle of next month & it may be the end of it. Cj. M.[1] thinks of going to Philadelphia next week. . . . I should be heartyly glad for Govr Clinton's sake that you were here at his return. . . . Seeing no man can be more willing & few more able to Serve him in England than Cj. Morris, & the Chief matter [that] will be wanting is to give him a good insight into what is to be done and into the materials effecting it which I think is impossible to Let him into So fully as you could. Cj. Morris tells me the Govr is extremely Chagrined with Catherwood.

"He had rec'd a letter from him acquainting him that having had his accounts of a late date only, [those] concerning the Expedition are Lost, Mislaid, or Secreted, & Desireing to bring his accounts with him by which it Seems likely he had possessed the Governor's friends with his intention of returning and consequently needless to do anything in his other affairs till he came. . . ." "I have received 3 ltrs from Catherwd," wrote Clinton in November, "the first . . . as follows—Lord Hallefax told me yesterday that he hoped you wou'd not leave Mr D'lancey your deputy in case you come home whereupon I told His Lordship, that I believed you had Suspended him, He asked if Yr Exccy had a power so to do, to which I answered yes, at which he was greatly pleased. . . . The next . . . Sayes he was told by one that I should have put him in Irons, others that I should have sent him home in Irons, & if no Lawyer woud prosecute I should have appointed a person of my own naming to have done it, . . . & he says has inclost 'this to Dr. Colden in case of your

[1] Chief Justice Morris.

Absence who suppose you have appointed Lieutenant Governor' . . . the 17th September . . . is convinced at last I dont come home. . . . The Chief Justice has received letters from Sr P[1] which gauls him much . . . for it's hinted that he will be turned out of all. I hope Catherwood will turn out more Sincere than thought by Some people." "Consult M Alex.," Colden said in his answer. But for the next year if some especially annoying attack was made by the faction; if the difficulty between Frenchmen and Englishmen in Nova Scotia was to be written up; if there was a crisis in Indian affairs; if the treasurer refused to recognize the governor's orders; if the French, already planning their march to the Ohio, were to be proved to have overstepped a boundary; if some administrative suggestion was to be made or if some entirely new problem was to be dealt with, it was Colden who was consulted or asked to do what was necessary, as the case might be. It is hard, indeed, to see what was left for any one else to do.

"The Gov. changed his resolution on very good grounds & for substantial reasons," he instructed Catherwood. "He could not so effectually serve his Majesty by returning to Great Britain . . . & the regard which he ought to have to his own reputation likewise required it. The Faction had endeavoured to persuade the people that the Govrs Conduct was so much blamed that his friends could not support him & that the Chief Justice has a better Interest at Court than the Govr & had he gon people would have been confirmed in this opinion . . . this opinion was exceedingly strengthened by the Govrs not having been able to procure anything directly from the Ministry in vindication of his conduct. If the Govr had gon, there probably would have been some grand effort made to have given some glaring instance of the People's Dissatisfaction. . . . It did not seem prudent to run any risque of this kind. . . . For his bills are not paid and probably attempts would have been made to have distressed him per-

[1] Sir Peter Warren.

sonally in order to satisfy their malicious peek and resentment & others must be persuaded that the distressing him personally would be the most effectual means to get their Bills speedily paid. I think it necessary to take notice to you of the mischievousness of the Methods taken by the Faction to carry their ends viz. by propagating the most vile and false calumnies . . . of his Excellency's administration. . . . It not only concerns the Ministry to discover those artifices which tend to destroy all Government . . . but every honest man who desires to enjoy his estate and liberty in safety. . . .

"This unreasonable increase of popular power by which the proper Ballance of power essential to the English Constitution is entirely destroy'd in the Colonies is wholly owing to the Governours having no subsistence but from the Assembly. I can give several instances . . . where Governours have for several years stood firm to the Kings Instruction in Support of his prerogative & . . . after all were obliged to comply with the humours of the Assembly or starve or be sunk in debt. . . . Yet I am of opinion that there is no need of Force to recover the King's just prerogative. . . . I am confident that if the Govr have his Sallary independent of the Assembly and proper Judges be appointed with Sallaries likewise independent of the Assembly & the public money put into the receiver General's hands granted by the King for that purpose the King's just prerogative will be recovered. . . . The Quitrents with the duties on Wine, rum, & other West India commodities will suffice. . . .

"I am likewise of opinion that the sending at least one skillful lawyer from England to be Chief Justice with a proper Sallary is absolutely necessary not only for recovering the King's prerogative but for the due execution of common justice. . . . A Chief Justice with a powerful family is not only too hard for any one man in the Governmt but may prove too hard for the Government itself. . . ." [1]

[1] November 21, 1749.

The subject of the hour was the lawless career of the treasurer. In consequence of an address of the House of Commons to the king, Bedford had written to Clinton for a detailed statement of the paper money current in the colony. This proved a difficult task, so difficult that it confirmed the suspicion that the treasurer had been reissuing bills, which had come in to be cancelled, for the use of the assembly. It was to prevent this very thing that Colden had opposed certain loosely constructed money bills with every argument in his power. But his failure to convince was a matter of course, and now when, after long delay and many fatuous excuses, the treasurer presented his statement, it was so clearly incorrect that he asked Ayscough if he might change the year "1747" to "1749" and make one or two other embellishments which would improve the balance, even though it were at the sacrifice of accuracy. After it had been patched up into some sort of order, a distressing discovery was made in regard to the excise. The act fixing the duty included the year 1756, but it appeared that the method of its collection was arranged for each year in the autumn session, the fiscal year beginning the 1st of January. But there had been no autumn session in 1749, and the assembly was prorogued till the 9th of January, 1750. This state of affairs was first noticed by the opposition, and for some reason both parties at once became intensely excited over the subject. "His Excellency," wrote Ayscough to Colden, "was very easy in relation to these affairs depending on what you told him. . . . But on my consulting with Messrs. Alexander, Smith, the Mayor and Recorder this morning, they are all of opinion . . . that the People have too good reason for the Rumour that is industriously spread abroad. The Case is thus, on a Supposition that His Excellency should meet the Assembly on the 9th of Jan'y next only to pass the 2 aforesaid acts, and they should insist on not going upon Business, but as they said before they would not, till his Excellency had

given a Satisfactory answer, this though irregular, and a mere Supposition, Yet . . . Mr. Alexander's Opinion is that the Governor should not meet the Assembly at this time, neither do I see how his Excellency can meet them till he hears from home. . . . The Recorder says that an act of Assembly (in case they should meet) can be made to retrospect. But it is Mr. Alexander's positive opinion it can not. His Excellency desires you would give yourself time, maturely to deliberate on this affair, & let him have as soon as possible by the Bearer your Opinion. . . . He takes it very unkind that you hurryed away so soon that you had not time to weigh well what to advise him in case anything should occur, by his continuing the Assembly prorogued."[1] "As the manner of Dr. Ayscough's writing to me as well as the subject of it was entirely unexpected," Colden wrote Clinton, "I choose to answer . . . to your Excellency. It was unexpected, because I thought your Excellency had considered the Subject of it some months since at least so far that . . . upon a very little reflection Your Excellency would have remov'd any kind of Uneasiness on this occasion which those in opposition have & will allwise endeavour to raise . . . especially if they can impose on the weakness of some of Your Excellency's friends . . . to make you uneasy. There is no doubt but that the Duty act expires & those Duties cannot be levied any longer but who has most reason to complain on this subject? Not the merchants surely by their being freed from the payment of Duties. . . . As to the excise, if anything has happen'd of prejudice to the Excise Fund by the Assemblies not meeting since Septr last, Your Excellency cannot be blamed . . . because it was the Duty of the Assembly to frame the temporary and yearly acts by which the manner of Collecting the Excise was yearly alter'd in Such manner that the Excise fund should not suffer in Case Your Excellency should not . . . assent to a like act for the future or decide not to meet the

[1] December 22, 1749.

Assembly. . . ." Otherwise, Colden went on to say, the governor's power to prorogue and to veto would practically be removed. He said, moreover, that, whereas two or three years before, the city excise was let or farmed according to the original act for £1000 or £1300 a year, the city and county excise had last been let by special act to certain persons by name for £740, while at the same time the excise of the whole province had been let for not more than the city had formerly produced alone. Yet owing to the increase of inhabitants it should at least have been double.

Clinton was glad enough to believe all this, for he had resolved, supported by Colden, but opposed by Alexander and Smith, to dissolve the assembly without meeting it again, unless some news of his memorial or some encouragement from his close-lipped superiors should reach him. Meanwhile, all was uncertainty. None knew whom to trust. It was reported that Sir Peter Warren had written to Johnson to keep in Clinton's favour and on a good understanding with the chief justice. It was impossible to read between the lines of such "a Contradiction in terms," as Johnson called it, so he settled the problem by barely speaking to Delancey when they met. Johnson, also, was hinting that he could not keep on much longer without some appropriation, and Clinton himself had advanced much that he might never get back. Yet he did not even dare to summon the council without Colden by his side, knowing, he said, that on his asking their advice, they would either be silent or at least only "hum & haw" and ask why Colden was not sent for. He was disturbed by hearing that a half dozen prominent "Yorkers," one of whom he had thought a firm supporter, were canvassing the country from New York to Albany in the interest of the opposition, while Catherwood's news was equally disquieting. Sir Peter, he wrote, was aiming secretly to become the New York governor himself, while Mr. Pelham had told Governor Shirley

that Colden had been represented to him as a very disagreeable person for the presiding officer of the government — and that he had even been suspected of being a tool to the chief justice and Sir Peter by exposing the loss of the king's authority under Governor Clinton.

And when the long-expected packet at length arrived, the uncertainty was not removed. Besides the report of an agreement between their Majesties of France and England there was, indeed, a letter from Bedford. But his Grace only promised his Excellency vigorous support, if things were as he represented them, as he had no doubt that they were. In April, however, the ministry sent for a repetition of the reasons for Horsmanden's suspension, sent first two years before, and Colden was given the old heads and asked to write them up. Evidently something was happening at last. About this time, moreover, an event occurred that Colden and Clinton thought might possibly strengthen their case.[1] One evening while H. M. S. *Greyhound* was cruising in the lower Hudson, a little boat flying a Bridger flag appeared. According to the instructions for the suppression of smuggling, the guns were pointed and the commanding officer ordered the first mate to fire in warning. The flag still flying, he ordered him to fire again, and this shot instantly killed a nursemaid on board the little boat. Unfortunately, the commander of the ship was a Captain Roddam with whom Clinton's daughter had eloped a year or two before. He was not on board at the time of the shooting, but that made little difference. The owner and skipper of the small boat was a popular young militia officer and the affair was made a party issue. Captain Roddam arrested the lieutenant in command to be sent to England for trial and despatched the mate and others to the coroner's inquest. But Delancey issued a warrant for the mate's arrest before he even knew of the results of his exami-

[1] N. Y. Col. Docs., VI, 571–576.

nation. In vain Roddam urged that the offence was committed neither in the city nor county of New York but in the Hudson between New York and New Jersey, and that it was, therefore, cognizable by the admiralty board, sending a clause of Clinton's commission in proof; and in vain Clinton ordered the attorney general to demand the mate's person. Delancey paid no attention. In was then that the administration thought they saw their opportunity. "By the enclosed message and letters," Ayscough wrote Colden, "you will see the evasive Subterfuge of the C. J. I have shewn them to Mr. Alexander who is much pleased . . . and doubts not but on a proper Representation of the Facts this may be a finishing stroke to him . . . for such proceedings after so sufficient notice as the copy of the clause in the Governor's commission, cannot be reckoned consistent with good Behaviour. His Excellency desires you will represent it in its proper light as strong as possible. . . . Smith is of Mr. Alexander's Opinion. . . ." "Write to His Grace of Bedford & to the Lords of Trade. . . . It may be likewise proper to write to the Admiralty," Colden exhorted Clinton, "not only as you are Governor of this Province but an Admiral of the fleet . . . as the proceedings in this place may greatly affect the authority of the officers & the Discipline on board his Majesty's Ships in the Colonies and render the observance of the instructions which the Captains receive for preventing illicit trade difficult if not dangerous to them. I am of opinion that the Chief Justice will release or deliver up the gunner's mate the next court on his pleading to the jurisdiction & thereby excuse his past conduct. But this Your Excelly is not to trust to nor on such expectation to delay your giving the proper informations. Your Excelly I suppose will leave the C. J. to proceed as he shall think proper without any interposition on your part unless he proceed to a Condemnation in which case you have the power of reprieving. . . ."

Indeed, Smith to the contrary, Colden and Clinton had never been on more friendly terms. "I propose setting out for the high lands about the 5th of next month," wrote Clinton, June 29, 1750, "and . . . I am determined to make you a Visit at Coldenham about the 10th but now Dear Colden no Fuss. . . ." "On my arrival I found . . . a Letter from Mr. Catherwood," he wrote on the 19th of July. "Mr. Holland and Coll. Johnson are both appointed of the Council . . . & no mention of Mr. Alexander's being restored which as I imagine has made Mr. Rutherford and him change their note about a dissolution. C. Justice Morris is at Bath & Lord Hallifax is there too so that nothing can be done in any other affair till he returns from Bath. Therefore I must desire you will set out immediately . . . that I may consult with you for I have already gave private notice to Colonel Hicks Morris & the persons who are in my interest in King's County that I proposed a Dissolution, this being an Affair that requires your Advice to me as well as talking to Messrs Alexander and Rutherford. . . ." "Capt. Roddams's Gunner's mate was found guilty, of manslaughter, C. Justice on the bench," wrote Asycough on August 8th, " notwithstanding it was the opinion of every one when the Point of Law was argued before him the day before by Mr. Smith and Mr. Murray that the former's Assertions were so Strong that every one thought it must have went in favour of the Commissioners of the Admiralty to take cognizance of it & Mr. Smith was ready to prove his Assertions by the Books but it was not allowed, the C. J. saying he was fully persuaded it was cognizable in Banco Regis . . . I hope to get you by the time you come down the arguments on both sides for your assistance in reporting the case home. Oliver entered his appearance the first day of the term. His Excellcy desires you will not, by any means, fail being down by the 28th at furthest that he may be prepared to meet the Assembly, which he proposes to do fair and Softly and see what that will do with them. . . ."

## X

It was a new assembly of which Ayscough wrote. For when the report of the agents that definite news was near was followed by the announcement that the case of New York would not be considered before the king's return from Hanover, Clinton determined to risk an election on the strength of the appointment of two of his own nominees, Holland and Johnson, to the council. The government was being run on credit and the creditors were getting tired; Clinton had himself paid for Oswego for a year and he was getting tired; and it was necessary to check the French. They were indefatigable: setting English Indians on each other and on the Indians to the east, the west, and the south; supplying Indians on the way to Oswego with necessities at a reduction and with brandy and rum gratis; claiming vast stretches of country with Gallic ceremony; and forbidding the natives to admit the English under heavy penalties. "Mr. Weiser [an interpreter] is just returned from Onondago," wrote Franklin to Colden in October, "and gives a melancholy account of the declining State of the English and Encrease of the French Interest among the Six Nations. I hope the Interview intended with them by your Government will be a means of securing their Attachment to the British Nation. I wish you all the Satisfaction that Ease and Retirement from Publick Business can possibly give you. But let not your Love of Philosophical Amusements have more than its due weight with you. Had Newton been Pilot but of a single common Ship, and left it in the hour of danger, the finest of his Discoveries would scarce have excus'd or allowed for abandoning the Helm one hour in time of Danger. How much less if she had carried the Fate of the Commonwealth. . . ."[1]

As this implies, the assembly had met with Colden at Coldengham. There were six new members, but Jones was still speaker,

[1] October 11, 1750.

and the old-time leaders were in their places. They feared, however, that the governor would reject their support bill, just as he feared that they might refuse to present one. For the creditors did not all blame Clinton, and there were many complaints of the selfishness of party. Their fears, of course, proved groundless. Clinton urged the wisdom and necessity of conforming to those instructions framed by the great ministers of the Revolution, but he promised the speaker to pass all bills as they were framed in Clark's time, and then wrote to Colden to make his excuses to the Duke of Bedford and the Board of Trade. When, moreover, the assembly refused him an appropriation for a treaty with the Ohio Indians and the governor of Pennsylvania, because Pennsylvania would get the benefit without the work, he merely said that he would give his time and services if they would meet the expenses. So most of the debts were paid, a civil list granted, and the governor promised a new house and stable, while the assembly was adjourned without a break in the calm. "His Excellency . . . wants your advice now as ever he did at any time," wrote Asycough, "but he will endeavor to do the best he can without it." Yet it is doubtful if Colden would have permitted such a surrender of the principles laid down by the administration as Clinton had allowed himself. "I expected a particular account in what manner the affairs of the Assembly concluded . . . ," he said to Clinton in regard to some letters he had written to England at the governor's request. "Without this I could not form what Your Excellency desired of me as I wished. . . . I hear that the Assembly has complied with your private concerns and I very heartily give you joy of it not only for the immediate use it is of to yourself & family but that by this it will appear that the real ground of dispute with Your Excellcy was not from anything personal . . . but from your Indeavours to support the King's Authority . . . and that now the Ministry may see that Your Excellcy can be as well as

to your own private Interest with an Assembly of New York as any other Governor if you would consider more the pleasing of them than your Duty to the king and that upon such terms you doubt not to have the same men who exclaim'd against you to represent your Excellcy as a man of the strictest honour and integrity."

"At this time," Clinton replied, quoting an English friend, "the Plantations engage ye whole Thoughts of the Men in power, and your Province in particular and C. J. Morris is extreamly dilligent and . . . extreamly well received. . . . There has been a great Council at ye Cock Pit . . . what is concluded on is not yet known but soon will be as ye Lords of Trade are ordered to draw up a State of these 2 Provinces (New York and New Jersey) to be laid before ye Council together with their opinion what Measures will be proper to restore and establish ye King's Authority. . . . I intend Proroguing the Assembly to the 8 of June next, and won't say I will come & fetch you but I believe I shall. . . ." "You have been his [the governor's] toast every of those three times that I have been in company with him," Alexander reported cheerfully, "and Fryday night Mrs. Clinton found fault with his toasting of you for that you were her Constant toast. . . ."

But there was a fine air of patronizing disapproval about Colden's last letter that worried Clinton. He had given Colden all he asked. He had made one son commissary of the levies, another storekeeper of the Fort and clerk of Albany County, and he had done all he could to make Colden himself lieutenant-governor. Yet his hearty kindness was certainly not reflected in his old adviser's possibly sarcastic felicitations, though the adviser was planning to appeal to it once more. The mandamus for the restoration of Alexander to the council had at length arrived, and that good friend lost no time in using his new position to get Colden at least one thing he wanted. Hence it was

decided that Colden should apply for a commission as surveyor general during good behaviour, to be granted to himself and his eldest son jointly, with reversion to his son at his death. He also wrote a personal note asking the governor's influence, and sent both note and application to Alexander to use as he judged best. "Mr. Kennedy Sent me word this morning," wrote the new councillor on January 2, 1751, "that his Excellency would see Company at noon, & Rutherford, he & I agreed to go together. . . . Instead of a deed of trust I Drew the form of a power from your son to you to Execute solely the office during your Life, with power to Set his name with your own to all things to pass in the office, with covenant to execute no part of the office personally during your Life without your express order in writing . . . and Least objections might be to the Granting 1 office to 2 persons I made some extracts from the present State of Great Britain printed in 1720 of a Single office granted to two & sometimes to three persons. . . . I also then got the commission Engrost in parchment. . . . Since writing the above I have waited on his Excellency. After the Company was gone his Excellency called me and we had almost half an hour's Conversation on your affairs, the result whereof was that he would call a council to morrow morning & would Send beforehand & speak to the Mayor. . . . You'll wonder how we came to talk so long on that affair, In short his Excellency expresst Some apprehensions of your being Dissatisfied, recapitulated reasons why you ought not and reasons for his apprehensions, among others the bad Success he had in giving a Commission in that manner to the Chief Justice, which I obviated with the best reasons in my power and said that Acquaintance with you above 33 years rendered me well assured of the impossibility of your making a Like return for this favour as the Chief Justice had done in the like case.

" One of the reasons for his apprehensions was a Letter he told

me he had received from you . . . with some things more biteing than he had Expected. I think it would not be amiss you lookt over your Coppies or recollect what could give offense in any of your Letters, and if you can Discover anything that way to apologize for it. Your daughter's illness is a sufficient foundation.

"One of the reasons why you ought not to be Dissatisfied was that he had kept the office of Secretary of Indian Affairs open for you, that he had Several times proposed giving you a Commission for that purpose, that he had wrote home to prevent any Commission passing there, that wen Catherwood had wrote to him that Coll. Johnson had recommended Lidius to him for that Commission . . . he wrote him back to oppose it to him or any one else but if the thing was pusht by any to insist on your being the person to whom the Commission should go, that his Exy did [not] remember your reasons for declineing accepting the Commission from him. As I had no orders to his Exy on this head, I only declared I was not acquainted with your apprehensions. I submit whether it may not be proper to communicate them to me, which with a brief letter to His Excellency on that head acknowledging his favour therein may be a good introduction to talk on that matter. . . ."[1] "I am just returned from the Council," he added the next day with friendly repetition, " where the affair was agreed to nemine contradicente, Mr. Murray was indisposed so not there . . . the Examples collected were of use. . . . I think it highly necessary to root out those apprehensions exprest to me, it's impossible in person to do it at this time of year. But a Letter Carefully Penned I believe may do as well, — if you find anything in your Letters that you think could give offense, that together with this favour of the Commission I think may be the foundation of this Letter. If you can see nothing, then cite me for

[1] January 2, 1750/1.

having given you the hint . . . and say that the Lowness of Spirits by the Indisposition of your daughter might have suffered something to be expressed by you that were it not for that you should not have done so. I beg pardon for going so far in a thing that you knew much better how to do also to render him thanks for what he talked to me on the head of the Secretaryship of Indian affairs, with a brief hint of the reasons of your declineing them & your readyness now to accept the Commission & if he will join your son in it will greatly increase the favour. . . . When these apprehensions are fully removed & that Commission had I am in . . . hopes that . . . the Government shall be Left in your hands as president . . . if your letter . . . even went so far as to express an abhorrence of the ungrateful return of a Certain person, . . . I believe it would not be amiss. . . ."

Despite this disinterested insistence, Colden softened into neither impetuous denial nor warm apology. "Your Excellency will never find me ungratefull," he calmly assured the governor. "Mr. Alexander tells me," he went on, "that Your Excellency was displeased with somthing in my letter. . . . This has given me a great deal of both surprise & uneasiness. I am sure nothing could have been further from my intention than writing or doing anything that I thought could be disagreeable . . . to you & therefor I must think that your Excellency will . . . soon be convinced it can bear no such construction however unhappy I may have been in expressing myself & for which the circumstances of my family at the time may plead. . . . Pray offer my Duty to Mrs. Clinton and please to make my acknowledgements to her friendly good offices on many occasions. . . ." "Your late acts of particular friendship," he wrote to Alexander the same day,[1] "are such as I cannot properly acknowledge in words and I believe you do

[1] January 17, 1750/1.

not expect I should. Some part of your letter really surprised me . . . for I had no intention to displease him but otherwise. I have lookt over my Copies and cannot discover any reason for his displeasure & therefore, beg of you to desire a sight of my letter & to inform the Govr that I desire you to do it that I may excuse myself. . . . My last letters were to be a foundation of his for the D of B & Lds of Trade in excuse for his meeting the Assembly & receiving the Sallary in the manner he did. My intention was to make the best excuse consistent with truth & which I still think I did. Going from the truth could neither be of use to him nor me, therefor, I hope he did not take amiss my keeping close to it. . . .

"As to the Secretary's office for Indian affairs I shall truly tell you my past thoughts. 1. No profits besides the Sallary of the office can attend the execution of it. 2. The Govr's Commission cannot give the Sallary annexed to it. 3. As there had been great pains taken to give the D of B and N and Mr. Pelham prejudices against me . . . I could not expect that anything would be done by the Ministry in my favour till these prejudices were removed. . . ." This letter Alexander decided to send to the governor, and when Ayscough, who acted as messenger, returned it, he also brought the cause of offence which he asked Alexander to read. And Alexander did read it over and over again without finding, as he told Ayscough, an objectionable word. This ended the episode; but before he left, Ayscough informed Colden's good friend that the mayor had asked and received the promise of the secretaryship of Indian affairs. "I believe," said Alexander, "that he saw me change colour."

In December, 1750, Clinton had applied for leave of absence for twelve months, in order to regain his health and arrange his private affairs. Still unwilling to leave Colden, and still afraid to follow Colden's advice, it was probably at his suggestion that

Chief Justice Morris and two of Clinton's agents presented certain questions to the solicitor general and attorney general of England. Though Clinton's commission empowered him expressly to suspend the lieutenant-governor, and appoint another in his place, and provided for the succession in case of the governor's death, or absence, were such an appointment not made, they nevertheless asked: Could Clinton bring Delancey's commission home, could he disregard it and appoint another, or could he swear Delancey in, and then suspend him and name a successor? The significant clause of the commission was prefixed, but the two law officers had replied that Clinton should beg the king to appoint another or empower him to do so, and Catherwood at once memorialized the king accordingly.[1] Meanwhile, Clinton seemed in actual terror of Delancey. He was afraid to be left alone in the city with him, and when Alexander was about to leave for "the Jersies," of whose council he was also a member, both he and Clinton implored Colden's presence.

Clinton, indeed, had still no reason to feel encouraged. As far as exact knowledge went the success of Morris's mission was uncertain after nearly two years' work, and the report of the Board of Trade had only just reached the Privy Council. Something of its tenor was indicated, to be sure, by the confirmation of Clinton's nominees, Holland, Alexander, and Johnson, while the assembly's agent, Mr. Charles, had hinted of ministerial disapproval of his clients. But he had been unable either to get a copy of the report, or learn one of its provisions. He could only tell of its size. It consisted of a whole quire of paper, he reported, with quires more as appendix, and on another occasion he announced with regret that it was contained in whole volumes of paper of which he was denied a sight. There was no reason, moreover, why the consideration of this huge

[1] N. Y. Col. Docs., VI, 612–614.

document should take less time than its compilation. Indeed, it might take more, for Bedford, no longer able to stand Newcastle's fussy jealousy, had resigned, and there had been other changes in the ministry to which Clinton had appealed. Halifax, who was at least businesslike and ambitious for his country as well as himself, fortunately remained at the head of Board of Trade, but unfortunately, Bedford, a peer of ability and real, if narrow, patriotism, was succeeded by Robert Darcey, Earl of Holderness, who up to that time had been too much absorbed in private theatricals and masquerades to have given much time to affairs of state. "In reality he did justice to himself and his patrons," Walpole says, "for he seemed ashamed of being made so considerable for no reason, but because he was so inconsiderable." Amid so much uncertainty, one thing, however, seemed certain. Robert Hunter Morris was to be lieutenant-governor of New York, and Colden was to gain nothing from the agitation which he had done more than any one man to bring about. This news came authoritatively from Major Rutherford, who was in London on leave, and he reported as well that the ministry had received a bad impression of his friend. About this time also Colden was disappointed in an application for the position of postmaster general. For though he had written Alexander, less than a year before, that he expected to spend the rest of his life in industrious retirement, he had evidently changed his mind. Too much of a pedant to be a skilful politician, Colden was yet too much of a politician to be an entirely absorbed philosopher. He had, however, been working on a subject that touched both phases of his temperament.

Since the close of King George's war the New York administration had been playing an admirable part in Indian affairs. Wherever France intruded, there New York tried to meet her or see that she was met, while using every argument to

instill a like sense of responsibility in the other colonies. A special effort had been made to bring together at Albany, this summer of 1751, all the colonial governors and representatives of the Indians in their alliance. But though the governors were willing, their assemblies were not, and South Carolina, with six Catawbas, and Massachusetts and Connecticut, with no Indians at all, were alone represented. Indeed, Clinton's own assembly refused to give more than the £150 usually given for the annual Indian treaty, until pressure of some sort sent the speaker to Clinton to say that the treasurer should be directed to advance £200 more. And this, though it was the first treaty in four years. The fact was that the assembly had never forgiven the transfer of Indian management from their friends, the commissioners, to Johnson, which had been at least in part the result of Colden's first advice to Clinton. Johnson was a trader himself, and many Indians whose way took them by his house found it unnecessary to go to Albany, or even to Oswego, where a colony of traders whose interest was not that of the Indians had sprung up. Besides, Johnson was unassailably honest and independent. So his salary was unpaid long after much later debts had been settled, his services in keeping the Iroquois from going to Canada to make a separate peace were told over to unenthusiastic ears, and the administration's broad Indian policy was regarded with perfect indifference.

Such as it was, the Indian conference was held in July, and while still full of its suggestions Colden, at Clinton's request, wrote a "state" of Indian affairs with propositions for their betterment. The result was perhaps one of the earliest pleas for the treatment of the Indian as a man and a brother. As matters stood, Colden made it clear, he was roundly cheated, the Oswego set and the Albany set vying to fleece him, and yet he was almost totally deprived of the benefits of the law. His word was not admitted as evidence, and he was obliged to fee

a lawyer, take out a writ, file a declaration, and then wait for justice, sometimes for a year. And while the English and Dutch were thus bullying him to their liking, the French were planning the destruction of his independence with more system, but equal indifference to his welfare. They proposed to have a fort and trading posts at each harbor on the Great Lakes, where they might first win the Indians by selling under cost, and then, when strong enough, sell at a profit and force them to buy. The French commandant at Niagara, for instance, was told to undersell the English, though it cost thirty thousand livres. Colden, however, still thought that the French could be easily beaten in the struggle for Indian control. Given, he said, Indian goods free of duties; Indian equality before the law; a superintendent of Indian affairs of ability, with no trading connections, with authority to prevent and redress grievances, and with a good salary and provisions for assistance; as many missionaries as possible, but subject to the superintendent; a sloop to cruise on Lake Ontario, and another fort on its southern shore; and, finally, to pay for all this, a duty on the consumption of wine and spirits, and he would answer for a vast improvement in the Indians themselves and their loyalty to the English.[1] But when, at the autumn session, Clinton asked the assembly for an appropriation for Indian affairs, it was refused unless it could be expended by assembly nominees; and this Clinton refused, especially as some or all of these were engaged in the trade between Albany and Canada.

Clinton's cabinet now contained more than one, or even two, members. In addition to Holland, Alexander, Johnson, and Rutherford, — who, to be sure, was away, — the deaths of Attorney General Bradford and Judge Phillipse during the summer had given Clinton an opportunity to make William Smith and John Chambers his official supporters. Still, Alexander wrote

[1] N. Y. Col. Docs., VI, 738–747.

Colden as usual that his presence at the opening of the autumn session of the assembly was absolutely necessary. It was well, however, that Colden thought otherwise, for among these new men, conservative but of naturally Whig sympathies and influenced by no quixotic disregard of expediency, Colden's stiff devotion to a narrow governmental ideal would have found little sympathy. Hence with all the governor's new strength, Delancey held his own in that assembly, and Clinton went without copies of the assembly's addresses; without a support bill conforming to the commission and instructions; without an Indian appropriation; and never complained because the assembly found fault with everything from the way he had sent out the notices to the way in which he had managed the Indians. But having been thus submissive, he dissolved them without the least warning, and to their great discomfiture and the general amusement.

But as the faction controlled the elections, the dissolution did little good. And control them they did, for though the administration made most elaborate plans for the campaign, out of twenty-seven members twelve returned were relatives or intimate friends of Delancey. Some of these, moreover, controlled the votes of a part of the remaining fifteen, so that a majority was more than assured. In England, on the other hand, the case of Clinton *vs.* Delancey was making some progress. The Privy Council had actually rushed the consideration of the Board of Trade's report, approved it the preceding August, and ordered the board to draught instructions embodying their suggestions. But New York only knew that Robert Hunter Morris was unquestionably not going to be lieutenant-governor of the province. Early in 1752, however, Catherwood had written of an unusually satisfactory interview with Halifax. His Lordship had expressed great regard for Clinton, had shown much interest in his problems, and had asked many pertinent

questions, thus giving the agent an opportunity which, according to his own account, he had improved to the utmost. He had, he said, assured his Lordship that, if there was any objection to Chief Justice Morris, Mr. Colden would fill the office of lieutenant-governor with dignity, while he could doubtless bring the long struggle with the assembly to a successful conclusion. And when Halifax had asked how he could do this alone, when "a man of quality" had failed to do it with his assistance, Catherwood promptly replied that his failure was due to the policy of the English government. Clinton, too, was again urging Colden's appointment with enthusiastic friendliness, even though he was smarting under the suspicion that Colden had not treated him well in regard to the province lands. Certain personal friends who wanted land themselves had told the governor that Colden was holding up patents in order to get the fees after Clinton had left the province, and could no longer claim his share. Clinton did not know whether to believe them or not, and for days his private secretary was kept busy bringing complaints from the Fort to Mr. Alexander, and returning with explanations. All of which Colden himself took coolly enough. Apparently Alexander's comforting declaration that he believed the misunderstanding due "to meer misapprehension and lowness of Spirits by his being alone without cheerful company" was not necessary.

In truth, neither depression nor dull society nor the slander of the disappointed was the reason for Clinton's instinctive uneasiness. Colden had become tired of him and his concerns, and he doubtless showed it. To some extent weariness must have been the portion of every one interested in the Board of Trade's report. For in New York the summer of 1752 was as barren of news as had been the summer of 1751. Nor did they know much more at home. Newcastle had gone to Hanover with the king, having valiantly refused to set foot in any boat

but Lord Cardigan's yacht, which had lately escaped a great storm; Holderness was playing blindman's buff at Tunbridge, for which he was later in disgrace; and London seemed asleep.

But what annoyed Colden most was Clinton's vacillation. Months before he had written that if the next ship failed to bring definite news he would suspend Delancey immediately. Yet he was still asking the same questions about his ability to do so, still receiving a fine assortment of answers. One day in July the governor, Judge Chambers, and Alexander lunched at a tavern, and decided after a most silly discussion that the chief justice must be summoned to take the oaths at once; and then the same three, with the mayor and Receiver General Kennedy, dined at another tavern, and decided to wait until the next ship arrived from England.[1] To Colden, whose opinion had never changed, such hesitation was maddening. Naturally enough, he determined not to go down for the assembly, but Clinton was as aggrieved as if such a refusal were a new thing, and wrote begging Alexander to urge him to change his mind. Colden himself, he recalled, had said that, if he should desert the governor now, it might be well said that he had served him before for "Lucre."[2] Nevertheless, Colden was absent from the short session, with its short curt speech, its shorter address, presented unheralded, the governor's still shorter reply, and his prompt adjournment after the passage of the most necessary bills in the old form. For though Clinton had frequently protested that he would not call the new assembly together before leaving, he had been obliged as usual to alter his plans.

Clinton was right in saying that Colden had given his enemies cause for suspicion. These now said that he had thrown the

[1] Alexander to Colden, July 10, 1752.

[2] Governor Clinton to Alexander, October 7, 1752.

governor over the moment he found out that his success in making New York unpleasant to Clinton and Clinton contemptible to the ministry was not to be rewarded. But that Colden had championed prerogative for personal reasons only, is unthinkable. Ambitious as he might be, he was sincerely reactionary in his politics, and could not have followed a different line of action had he tried. On the other hand, he showed the lack of a fine sense of honour in his treatment of Clinton. For, as will be seen, he did even more than drop him.

At last, convinced that he could not be lieutenant-governor, in August, 1752, Colden applied to Halifax for a salary out of the quit-rents as surveyor general. This his Lordship pronounced impossible, as the accounts of the auditor general proved that already the pay roll of the New York establishment exceeded its income. He also declined discussing New York affairs in detail, the appointment of Clinton's successor making it, he said, unnecessary for him to go into "so distant a Subject." But he commended Colden's course, somewhat perfunctorily, it is true, and assured him that while it had been deemed impolitic to permit the suspension of Delancey, it was certainly not because Colden had been considered unfit to preside over the government. At this mild praise Colden was much pleased, and did not require Clinton's admonition to write again at once. For Clinton was positively eager with delight over the possible improvement in his friend's prospects, and was planning to further it all he could when he went home. A more encouraging letter arrived in September, and then, after waiting six months or more, Colden wrote again. He also asked Collinson to find out if his appeal was received, adding that, as the thought that he had advised Clinton might affect it, he would say that many things had been done without his knowledge and others without his advice. When, moreover, he learned how Collinson had been received by Halifax,

"in a very affable manner"; how "many Hansome things," his Lordship had said of Colden himself; how he regretted that he had "embarked with the late Governour," though the governor "otherwise might have gone to greater lengths"; and how unsatisfactory was the financial prospect since Mr. Pelham's death, Colden wrote his friend an account of his connection with the late administration.[1] The principal charges against Clinton, he affirmed, were his payment of the forces and his sale of offices, and he could prove by writing under Clinton's hand, that in both these points his own advice had been rejected. This was all very well. It is exasperating to suffer for having advised what you opposed, but if Colden did not know what he was doing when he assumed the responsibility for Clinton's administration, he must have known very soon after, and, having chosen his part, he should have been brave enough to accept the consequences.

Meanwhile, the Clinton administration had come to its end. The confirmation of William Smith as a member of council against the candidacy of Colonel Lewis Morris and Oliver Delancey had been another intimation of the ministry's intention, and the last meeting of the assembly under Clinton was a love feast. An even more significant fact was the transmutation of Johnson into a popular favourite. Clinton, urged to meet the Indians, had said that under the circumstances he would meet them only by commission, and then, in all seriousness, he was presented with a joint address signed by James Delancey and David Jones, humbly hoping he would "commissionate" William Johnson as the most popular person to represent him. Colden was greatly encouraged. Evidently prerogative was to be upheld, and the assembly knew it, and if it was, who so able to assist the new governor as himself? He thought, as he

[1] October 4, 1754.

afterward told Franklin, that he would be obliged to stay in New York, for Halifax certainly appreciated his devotion to principle. And then that happened which none could have foreseen. Sir Danvers Osborne arrived, bearing instructions which, Walpole said, "seemed better calculated for the latitude of Mexico and for a Spanish tribunal than for a free, rich British settlement," and took the oaths of his office. Walpole's opinion was that of an extreme Whig, who knew little of American conditions, but the instructions were sufficiently severe, and when Osborne, naturally diffident, and in deep personal grief, saw the open disrespect accorded to his predecessor by the people on the day of his inauguration, and realized the part he had to play, he could not stand the strain and committed suicide early the next morning.

This made James Delancey the head of the province after all, and Colden promptly retired, says the continuation of Smith's history, "cheated by his friends and disappointed by the administration, under the scoff of his enemies and the general contempt of the people."[1] The first statement, at least, is not true. Colden's friends were friends for life, and for the next seven years they kept him, as they had before, completely in touch with the life of which he was no longer a part. But with the majority his reputation was fixed for the bad; he had lost his opportunities so entirely that his greatest opportunity, which was to come, was scarcely to be an opportunity at all, men's minds had hardened toward him to such a degree; and, above all, with all his interests, all his learning, all his real worth, he had learned no lesson from experience. Of how to subordinate himself, how to study another's point of view, how to value his opponents and even his inferiors, or, indeed, how necessary it was to learn these things, he was as ignorant

[1] Smith's History, II, 162.

as in the beginning. And thus one link, and an important one, had been forged in that chain which was to drag England and her American colonies apart, for Colden had retired as a politician, but he was to reappear as chief of the province, and, with all his prejudices and limitations, was to attempt to guide her through the most critical period of her history.

# A COLONIAL EXECUTIVE

## I

It is one thing for a man to win a coveted position in the presence of his enemies, and to the discomfiture of his rival; it is quite another when, long after his own defeat, he slips by mere right of succession into the place made vacant by the death of his quondam antagonist, now eternally triumphant. So Cadwallader Colden must have thought when one day in August, 1760, an express came to his Ulster manor house with the news that James Delancey had suddenly died, and that as senior councillor the headship of the administration was his. For many years his zeal for the crown, displayed with conscientious tactlessness, had rendered him the most unpopular man in the province; for many years with unimpeachable logic he had demonstrated to an English ministry his own loyalty and Delancey's political pliability; for many years he had sought the lieutenant-governorship, first merely to satisfy his own honest ambition, but later, to disprove the all too apparent truth, that England gave her favours as it suited her convenience or caprice, and not as justice demanded. Yet an ungrateful government had given the honour to Delancey himself, and had disregarded all prayers for its revocation. Colden, however, did not despair until by the death of Sir Danvers Osborne, the newly arrived governor, Delancey became commander-in-chief of the province. Then at last he felt that for him political ambition had become an absurdity. He fled the town, and, save on special occasions, had never returned.

But he was compelled to hear how Delancey had played his part; how he made many of the same demands, and said many of the same things which had been called outrageous when made or said by Colden and Clinton; and how his admiring followers insisted that his apparent inconsistency was mere politic deference to a power that he would be sure to manipulate for their benefit. Fortunately, Colden had little imagination, while at the same time he never permitted himself to criticise the judgment of his superiors. Hence, though the summons found him engaged in a dozen schemes of experiment and research, undertaken in the hope of yet discovering some great truth which should rescue his name from the obscurity he dreaded, he threw them lightly aside, and reëntered his old world with enthusiasm, his old aims reviving and new schemes for their accomplishment springing to life as he went. This showed unusual adaptability for a man of seventy-three; and for one whose memories were so far from inspiring, it was marvellous. Here at last, he said to himself, was an opportunity to realize his political ideals, to strengthen the prerogative, to work for the crown, and so for its subjects; yet he would use it with such complaisance that it would be impossible for the most radical "Independent" to find fault; here was an excuse for renewing his correspondence with some of the great men of England; above all, here was an opportunity to press his claims to be lieutenant-governor, and perhaps this time they would be satisfied.

Fate had chosen for his return a moment which we would now call psychologic. One of the most brilliant contests that England had ever waged, with seats of war in three continents, was nearly over; its climax in America was but three weeks away. That event, which Colden himself had made his first political object forty years before, and for which he had worked ever since, that event for which American mothers had long

taught their children to pray, was about to be consummated and New France was to disappear. And though the prosecution of the campaign of which this was the outcome had been due largely to the enthusiasm of an Englishman, and though English blood and English money had been lavishly expended on the American wing of the conflict, the colonies had responded nobly to Pitt's requisitions, and felt justly proud of the part they had taken. To be sure, the successful engagements had been fought by British regulars alone, and the provincials had been present at the defeats. But while the generals laid the blame on the lack of discipline in the volunteer ranks, every colonial had something to say of the poor strategy, the inertia, and even the downright cowardice of some of the British commanders. Ten thousand provincials had exclaimed with amazement when Abercrombie gave orders for the retreat at Ticonderoga, and a little book criticising the conduct of the war in America, written by an American civilian, was published and widely read in England.[1] On the other hand, many a British officer had learned to respect the undoubted courage he saw in the colonial lines, and such daring as Wolfe's could not fail to win enthusiastic appreciation even among the matter-of-fact farmers and merchants of New England. In short, the war had made Englishmen on either side the Atlantic more real to each other. But it was the ultimate rather than the immediate results of the conquest of Canada that were to change the destiny of nations, and of these, no one, not even Colden, was thinking just then.

Yet in Colden's own colony the Crown, which he had long prophesied might some day see its American dependencies

[1] "A Review of the Military Operations in North America," etc., written by William Livingston or the younger Smith and published anonymously in 1758. See note on this subject in appendix to Jones's "History of New York during the Revolutionary War," p. 426.

become independent, had lost ground during his retirement. It will be remembered that the continuous complaint of the Clinton-Colden administration had neither brought honours to the plaintiffs nor disgrace to Chief Justice Delancey, who was named as principal defendant. Instead, new instructions had been issued to the new governor enforcing the observance of the old, especially those on finance, with penalties so severe that when Sir Danvers had seen the sort of men with whom he must deal, he literally died rather than fight it out. His death brought about a situation full of interest, for it left the government in Delancey's hand, and made him the presumptive champion of the system on which he had led the attack. But his enemies had no cause to congratulate themselves. Delancey was too easily dominant in New York, his personal popularity was too transcendant, and the social leadership of his family too firmly grounded, for him to feel the slightest anxiety. At first he talked the language of his predecessors, but it was understood to be part of the game, and there was no murmuring, a mark of confidence which proved to be well placed, for while the legislature disregarded the instructions as before, he disregarded the penalties which were his to inflict, and long before his death the home government had ceased to command or even urge the revival of the fiscal regulations in force when the instructions were framed. Nor were these ever pressed again; the assembly had won the control of the purse.

Delancey was apparently, indeed, a law unto himself. Though it was an open secret that he bought the return of "Old Mother Hardy," the only governor appointed during his seven years' administration; though he swindled a whole regiment out of its rights with consummate effrontery; though he dared retain his office of chief justice without performing its duties, and so was chief justice, chancellor, and governor all at once; and though he made many slips as commander-

in-chief, he reached almost the close of his career without receiving a sensible check. Some of the most solid men in the colony, to be sure, were not his friends. To these his shallow brilliancy, his surface good-nature, his official dishonesty, were most distasteful, but they had little liking or aptitude for the rôle of political leader, and moreover their Whiggish proclivities caused them actually to approve the constitutional changes that were being introduced. So it happened that the inhabitants of New York got their first lessons in Whig principles from leaders to whom those principles in themselves were quite indifferent. How long this would have gone on had Delancey lived, it is impossible to say. But his attempt to make King's College an Episcopal foundation roused those who had remained cold to his demagogism, while it touched the Nonconformists in their tenderest point. Indeed, the last day of his life was perhaps the most unhappy, for then, on a social occasion, in the presence of his friends, his conduct had been ridiculed to his face by men whose good opinion was an honour, and so true were these gibes, and so unprecedented and humiliating the experience, that he had no word to answer. Fortunate always, his sudden death the next morning stopped the unravelling of his reputation at the start, and preserved his influence as longer life might have failed to do.

In the city itself Colden found many changes of a more obvious sort. Wealth and luxury had increased to an astonishing degree. The provincial gallants and ladies of fashion could now be as well turned out in Hanover Square and Broad Street as in London itself; it was the fault of a man's pocket or his taste did he not set his table with delicacies from all parts of the world; house furnishings and decorations of an elegance of which the earlier inhabitants had never dreamed were imported in quantities; and people of a literary sort were no longer obliged to look to England and the Continent for the

inspiration of new books. Prices, too, had steadily mounted. Provisions and other necessities cost three times as much as they had a very few years before, while so many persons were travelling the road from simplicity to comparative extravagance, that it was going to be financially disastrous for the new chief to maintain a suitable establishment unless he could reimburse himself by the profits of a long term. It was true he had a right to the house in the Fort built for the royal governors; but Sir Jeffrey Amherst, the general commanding the British forces in America, had for some time made this his headquarters, and it was with great reluctance that Colden wrote that it would be necessary to take a certain number of rooms for himself, reserving the best for the general. This brought an offer from Colonel Delancey.[1] He announced that his house was at the general's service, and Colden, with more impulsiveness than judgment, said that he would take it instead, leaving Amherst undisturbed. He did not do so, however, for when Amherst declined Delancey's proposition, Delancey, ignoring Colden entirely, told Mrs. Delancey to move in at once, an indication that the new chief magistrate had the old scores still against him. Colden, on his part, lost no time in representing to the Earl of Halifax, president of the Board of Trade, and to the Board itself[2] the justice and good policy of his promotion. He also wrote to his old friend, Collinson, to take charge of his candidacy, with power to draw on his son's account, while he himself besought the influence of John Pownall, secretary of the Board of Trade and brother of the governor of the Massachusetts Bay. He added that Mr. Charles, the assembly's London agent, was proving *persona non grata* to his clients, and it would be his pleasure to get the position for Pownall.

[1] This was Oliver Delancey, a brother of the late chief justice.

[2] Colden Letter Books, in Collections of the New York His. Soc. for 1876, I, 32–36.

Pownall's reply was encouraging. He considered the issue of a commission probable, and said that, while his present position quite satisfied him, his friend, Mr. Burke, would be delighted to supersede Mr. Charles, an ambition that Colden promised his best efforts to further. He admitted, however, that as Mr. Burke was quite unknown in the colonies, the result was doubtful.

The later discovery of this offer of Colden's was to make no addition to his popularity; but meanwhile, for the first months of his administration, he was undoubtedly enjoying his position. Old enmities were apparently forgotten, and he met cordial faces and heard congratulations everywhere he went. The little dignities of his office were grateful after his stormy career, and he was pleasantly unaware that the men who had gathered around Delancey were merely stunned for the moment by the unexpected change, and that the more moderate were confident that they could bring him, now an old man and naturally desirous of comfort, to meet their views. In fact, they hoped for nothing less than his repudiation of the principles of a lifetime, and this to be shown by the appointment of a chief justice during good behaviour. Supreme Court justices in the colonies were appointed in various ways. In New York the chief justice could be appointed directly by the king, by mandamus to the commander-in-chief, or by the latter himself, unprompted. The commander-in-chief also named the inferior judges, or puisnes, his instructions directing that he never should appoint save on the tenure of the king's pleasure. But however appointed, the salaries of all, both chief justice and puisnes, were granted annually by the legislature, and, always insignificant, could be made still smaller at their caprice. Such a system had long convinced Colden of three things: first, that no man of ability could give the time necessary to the office of chief justice for so small a compensation unless he were also

a man of fortune; second, that no man of fortune would undertake it unless he expected to gain thereby a more than legitimate influence; and third, that at the same time he, like his colleagues, was dependent on the legislature. The ring was complete, and no one could tell where it began. Naturally, moreover, its power would be increased by tenure during good behaviour, and that man was sanguine who hoped for Colden's acquiescence. There was some reason, however, why he should make an immediate appointment, for there was probably sincere alarm lest otherwise the English government might parallel its recent policy in New Jersey. There the treasurer of a north of England turnpike had been followed on the bench by a Newgate solicitor, the husband of some great lady and recommended by the Lord Chief Justice of the Common Pleas, in order, it was said, to get him out of the way, his wife's lover having influence with the great lawyer. "The people in general have received strong prejudices thereby," Colden wrote the Earl of Halifax, president of the Board of Trade, in reference to this appointment; "but at the same time I must declare I know nothing of Mr. Jones, having never seen him."

With equal diplomacy, William Smith having first refused to accept the office on the old basis, he left the matter with the board, procured the postponement of a formal address to himself on the subject, and succeeded for the moment in quieting the disappointed candidates, among whom were Judge Chambers and Mr. Morris, of New Jersey.

The first months of the new administration, in fact, were not conducive to controversy. In September came the news of the final surrender of Canada at Montreal. In November came Amherst himself to the booming of the guns of Fort George, when the city was brilliant with the British colours by day and illuminations by night, and when the mayor, aldermen, and commonalty conferred the freedom of their municipality on the victor,

in the usual gold box and with an unusually patriotic address. Finally, before the winter set in, the news of the death of George II and of the accession of George III lent that pictorial interest to political relations that such changes inspire. Hymns and anthems of thanksgiving were published in the newspapers; the overthrow of "the insulting Gaul," the triumph of British mercy over British valour, and the fatherly care of the old king were all subjects for poetic congratulation; while one enthusiast went so far as to forecast the future and through many verses saw "Europe tremble at the name of George." Public opinion was tinged with the same mild patriotism, and partly from this and partly from the caution of surprise, Colden's first assembly was comfortably uneventful. Still Colden did his share in the way of concession. If he got the salary he asked, he passed without flinching the currency and revenue bills in the very form he had once so vigorously condemned; was extravagant in his praise of his predecessor; and, it was greedily noted, when he gave the formal promise to concur in everything conducive to the colony's welfare, left out the customary proviso "consistent with my duty to his Majesty."[1] "Only another instance of the effect of responsibility," people wisely observed. An impartial observer might have added that Colden was proving himself by far the most able governor New York had possessed in over thirty years, and, by virtue of his wide knowledge of colonial conditions, the best-equipped of her colonial executives.

## II

With the progress of the new reign this rosy situation began to fade. "At my age," Colden had written to a fellow-governor,

[1] Journal of the General Assembly of N. Y., II, 634–635. He did say, however; "as far as is consistent with the Powers devolved on me by this Casual Accession to the Administration."

unconsciously voicing the thoughts of many, "an easy is better than a profitable administration."[1] But with unimpaired mental vigor and physical strength at least equal to its support, he soon found that mere expediency appealed to him as little at seventy as it had at thirty. His discovery was due, in the first place, to the lawyers, a class of men whom many regarded with a feeling akin to Mr. Tulliver's. In new countries where land disputes are frequent, ignorance general, and the rights of the government ill-defined, unless complete anarchy prevails, a lawyer can easily make himself a power. This had been in an especial manner the case in New York, where the lawyers, arriving late and slowly, had, about the middle of the century, formed a sort of union that had greatly decreased Delancey's influence. He had at once propitiated and controlled them, and, though he had never succeeded in making his interest theirs, he had achieved the effect, and many of the advantages, of an alliance. About the time of his death, however, there had been many signs of revolt, and, whether his skill would have been equal to their repression or not, it was certain that his successor must pay some court to the leaders of the fraternity or give up all thought of surmounting the difficulties of his position. Yet, for more reasons than one, Colden would have found such diplomacy impossible. At the time, the acknowledged leaders of the profession were three young men, William Smith the younger, John Morin Scott, and William Livingston. Livingston and Smith had been together at Yale, and then all three had gone into the elder Smith's office to read law, while, in their leisure hours, they planned the political revolution of New York with an enthusiasm which was not, perhaps, altogether youthfully guileless. These plans soon resulted in the formation of the Whig Club, which, organized in 1752, for years met once a week at the King's Arms Tavern. Here the members drank

[1] Colden to Thomas Pownall, Letter Books, I, 13, 14.

endless toasts to Oliver Cromwell and Puritan heroes of all types, while they listened to speeches which aimed to arouse a noble discontent with the decidedly comfortable condition enjoyed by most of those present. Gradually, dissatisfaction and patriotism became interchangeable terms, and the men who had brought this about, and whose own development Colden ascribed to the pernicious influence of the New Haven college, were considered not only as having held up a mirror to the situation, but as being alone able to cope with its complications.[1]

Such men were "levellers" indeed, and it was manifestly out of the question for Colden to meet them on any ground whatsoever. Even had their characters and motives been unimpeachable, he could scarcely have done so. To him an Independent was only less dangerous to society than a papist, an opinion confirmed by history as he read it and conditions in New England as he had observed them. "We have," he had written his son three years before, "instances in History of Kingdoms well governed, under absolute monarchy; but it seems to me, that it is impossible that a people can be happy, under a Government formed on genuine independent principles"; while in the same letter he propounded two queries: "how comes it that the old genuine Independents & Enthusiasts in general have so little regard to Veracity," and "what is the true Definition of a Bigot?"[2] With this opinion of Independents as a class, he had spent the leisure of his last country winter in preparing for the instruction of his children and the enlightenment of posterity a spirited commentary on Smith *fils* and his lately published history, which, though at that time continued only up to the year 1732, afforded him material for much indignant criticism. He also challenged the author openly, to prove the truth of the reflections on the surveyor general contained in the account of

[1] Jones's History, p. 5.

[2] Collections of the N. Y. His. Soc. for 1869, 209–210.

an episode belonging to the year 1737, and clearly dragged into the appendix for some ulterior motive, belying, as it did, the not unflattering characterization of Colden in the history itself. Smith half begging the question, half disclaiming any allusion to Colden, after some further correspondence, the controversy was dropped. But neither forgot, and the time had now come when its memory and the memory of all it implied prevented the amenities that Colden's own interest demanded and made personal malice a determining factor in Smith's choice of policy.

The situation soon disclosed itself. Everything was still going smoothly when, shortly after the news of the king's death arrived from England, the lawyers discovered an unwritten law declaring the dissolution of assemblies and the vacation of certain offices by the demise of the crown. Colden put little faith in the discovery and wanted to put less. But that made no difference. All legal processes were stopped at once, an oppressive uncertainty invested all but the most private actions; and Colden himself was full of anxiety because he had learned of the probable necessity for more volunteers before the spring, and there might be no assembly to provide them. The governor of the Massachusetts Bay had promptly proclaimed George III of his own accord, but the governor of New York was not allowed any such freedom of action; and when an unexpectedly late ship brought the necessary orders and the young king's proclamation continuing all officers in their places, he found to his disappointment that this was not to be the solution of his difficulty. Instead, the lawyers began to talk with learned vagueness of a subtle difference between commissions; some, it seemed, requiring to be continued by an act of Parliament. In any case, Colden felt obliged to yield the old assembly; and in March the members of a new one, elected in pursuance of his writs, met as usual in the City Hall on Wall Street. The management of a New York assembly was never an easy matter, and now, though only seven

new men had been chosen, the fact that some of their predecessors had been leaders of experience while those ambitious to succeed them had none, made party alignment next to impossible. Colden, however, secured for Amherst two-thirds of the number of volunteers that had been raised the year before, with their provisions and pay; and eighteen other pieces of more or less important legislation were pushed through and approved by him on the last day of a comparatively short session.

There remained two bills to which he refused to put his name. To one, designed to legalize all acts of government between the death of George III and the arrival of the news in the colony, he objected, first, technically, because it did not follow the instructions in several respects, and, secondly, because he thought it illogical. "It seems to me with submission," he wrote the Board of Trade,[1] "an absolute absurdity to say that a man can be restrained in his Lawfull acts by any matter or thing of which it is impossible for him to have any knowledge. It is establishing a kind of Law Popery . . . & By setting Law & Common sense in opposition Lawyers may obtain a most extensive power over the Minds of the rest of mankind." By the second bill the judges of the Supreme Court were to be appointed thereafter on the tenure of good behaviour, all other conditions remaining the same. The fact that they were subject to removal by the commander-in-chief on an address by the assembly or the signed advice of seven councillors did not mean anything under the circumstances, and Colden realized that, cost him what it might, he could never be so inconsistent with his past as to approve such a measure. So, while it was still in its earlier stages, taking for granted that its purpose was to render arbitrary removals impossible, he privately assured the speaker and other prominent members that he would sign a bill providing that no judge should be removed by a governor

[1] Colden Letter Books, I, 88–90.

save on the request of the king, the assembly, or at least seven councillors. Later, he even said that he would approve this bill as it stood, if the salaries for the judges were fixed permanently and to be paid out of a reliable fund. But when some members got the idea that he would sign if the salaries were made larger, one of his friends told the debaters that higher salaries would make no difference. It was steadiness of income that Colden wanted first, and though his council showed every indication of advising him to sign if he would but give them the chance, the bill was lost.

Up to this time, significantly enough, the judges themselves had agreed with Colden that is was unnecessary to renew their commissions, which had no concern with the king's will or pleasure, just because George II was dead. Naturally, they preferred these to renewals by Colden, of whose tenure they were at first doubtful and then unpleasantly certain. But the bar talked so solemnly of the consequences of the exercise of judicial functions by those who were no longer judges that, as the spring term drew near, the bench to a man grew nervous and begged new commissions identical with the old. "Sit upon your old commissions and the royal proclamation dated at Saville House," replied Colden. "That may not have been under the great seal," they retorted according to instructions. "Yours are as good as mine, and you'll stand on the same foundation," said Colden to the great delight of his tormentors, who now declared that fear for himself had been the motive of his opposition.[1]

The spring courts were nevertheless held without further incident, and at the same time a severe illness nearly put an end to Colden's career. But he weathered it sturdily, and, as if in congratulation, during his convalescence the long-desired commission as lieutenant-governor arrived. Yet now that it was at last his, the triumph of his success was diminished by the refusal

[1] Smith's "History of New York," II, 354.

of his request that his son, who had for some time shared with him the office of surveyor general, be made a councillor; by the knowledge that one of the generals concerned in the winning of Canada had been selected as governor of New York; and by the fact that his new office brought with it no salary except when there was no governor-in-chief. He suggested that Collinson remind Lord Halifax that it might be a bad thing for the government to put young Watts on the council board. His father, who had married a sister of the late chief justice, had been there some time; his uncle Oliver had just received his appointment after a long struggle, and the elevation of a third member of the family would do much to restore the Delancey self-confidence. It would be considered noteworthy that the acting governor's candidate had been refused in favour of one of a family long a stumbling-block in the way of the loyal servants of the crown. This and the expectation of a governor would, he feared, take away his influence.[1]

Clearly, Colden felt a growing disaffection among the people, and though some of the reasons for this must have been clear to him there were others that he was unable to perceive. He did realize that his refusal to pass the bill relating to the commissions of the judges, for instance, had made him enemies; but he did not see how exasperating it was that he should be more solicitous concerning colonial dependence than the English government itself. Clinton had broken the thirty-ninth instruction when he gave Delancey his commission, and if his action had been considered bad policy it had never been called anything worse. Indeed, when he later appointed John Chambers judge on the like tenure, his apology for doing so was promptly acknowledged as satisfactory. This justified his appointment of the penitent Horsmanden on good behaviour also, and when, in the Delancey administration, it was decided to have a fourth

[1] Colden Letter Books, I, 56.

justice, David Jones was appointed on the same tenure as his fellow-judges as a matter of course. It was therefore considered positively impertinent, excellent as his reasons were, for Colden to ignore the new precedent and to insist on writing home for further directions, probably insinuating ideas into the minds of his correspondents to which otherwise they might never have given a thought.

Nor was this his only offence. An expert on the land system, he had for forty years tried to impress his characteristic theories on the administration of the government lands with indifferent success. Yet not disheartened, he had used his new position to make a still greater effort to correct abuses, and had filled sheets with details and suggestions, in his instances caring not at whom he struck. Again, he had conscientiously fulfilled his duty of seeing strict obedience paid to the laws of trade. There is reason to believe that he himself thought Great Britain was making a mistake, and that to deny the English colonies the freest commercial intercourse with the island colonies of France and Spain was to her own disadvantage, forbidding, as it did, any great extension of her trade with her American subjects.[1] The British continental colonies had once been able to buy all they wanted in the markets of Great Britain, because the French and Spanish West Indies had wanted more of their products than there was sugar to pay for. But since this supply of specie had been stopped by the restriction of the sugar trade, the dissatisfaction of law-abiding merchants and smuggling on the part of the rest had been frequently cited as proofs of the harmful effects of the law. Colden, who went so far as to intimate this to the Board of Trade, determined none the less, on a principle still recognized as sound, to enforce the law as it stood, whatever he might think of it; and his reports of the ways of the smuggler soon became as circumstantial as his essays on the land jobber.

[1] Colden to Secretary Pitt, Letter Books, I, 26–28.

Thus, before he had been a year in office, Colden had disclosed his intention of doing his utmost to subvert the schemes of the three most influential classes of men in the community; and while to his contemporaries his reforms seemed irritatingly gratuitous, and perhaps no American can wish they had been successful, his courage and energy in grasping his opportunity, alone and unsupported by public opinion, is none the less admirable. Not that he was the only man in the colony who was loyal to Old England. There were many others, as time was to prove, and these also saw much to be desired in the attitude of their fellow-citizens to the country to which, after all, their debt was great. But they hoped for the gradual development of a sense of kinship through the influence of governors of tact and ability, the modification of trade restrictions, the promotion of education and of mutual knowledge and intercourse, and they bent all their efforts to further these ends. On the other hand, Colden, even as a young man, had been unable to see that England's slight hold on those about him was only natural; that it was impossible for a people of little education and with as much Dutch and French, as English, blood in their veins to feel any sentimental attachment for her traditions and laws.

This was unfortunate, as his long agitation for drastic measures served to increase the feeling of separation he deplored and to confirm his own prejudices beyond the hope of correction, while its effect had been equally dubious on the other side of the water. With a short-sighted indifference that was almost criminal, the English colonial boards had gone on making appointments with regard neither for attainments nor character, and when the inefficient objects of their choice appealed for the support they had a right to expect, had ignored them and seen them insulted with apparent placidity. Colden's portents and the complaints of disappointed governors were considered a nuisance, while Delancey, "leveller" that he was, was pre-

ferred because he was at least never tiresome. Yet there was never any willingness to modify the regulations made for England's fancied benefit, which Colden so everlastingly insisted should be observed and which the opposition so light-heartedly disregarded. Indeed, an occasional fit of responsibility would induce the enactment of even severer laws, but the lack of method in their enforcement was just as conspicuous. What wonder that the people of New York lost respect for such a loosely constructed government and became so unaccustomed to obedience that they resented even a rightful curb? What wonder that their representatives regarded a governor's opposition as an annoying cause of delay in a favourite measure, and nothing more, when in reality it was they who held the purse-strings and could force him to comply or lose what he was there for?

Accordingly, even the brief emergency session called in September, 1761, to provide defenders for the counties of Orange and Ulster, was made use of by both council and assembly to pass again the two rejected bills, the alterations being too slight for remark. And again Colden refused his signature. He quailed, however, at the prospect of a third encounter, and confided to his council that he had written home for directions. His requisition, he said, to be sure, had been "readily and fully" complied with,[1] but there had been an indication of the feeling toward him personally when the assembly snappishly refused its consent to the erection of a theatre by a company under the governor's patronage. The coming session of the Supreme Court, which was to be held the last week in October, was also sure to make more trouble. So it was with distinct relief that, alarmed by the rumour that the judges would consent to act only on condition of his compliance with their wishes, he heard from a Boston lawyer, Mr. Benjamin Prat, first, that he had been asked to be chief justice of New York, and later that he had accepted the

[1] To Pitt, Letter Books, I, 116.

offer. Granting him character and ability, this was just what Colden had wished, for Mr. Prat knew not a soul in the province. Unfortunately, his coming was delayed, and just before the day appointed for the opening of the court Colden announced in council that, unless the judges would accept new commissions on the tenure of the king's will, he would replace them at once. To the general amazement Horsmanden and Chambers yielded. Jones, however, who had been down on Long Island contesting an assembly election, and was on his way to town when he heard the news, promptly turned back, swearing that no power should ever induce him to consider the acceptance of a judgeship "on so base and precarious tenure," a decision which one of his fellows at least envied with all his heart. For, no sooner were the new commissions in hand than it was whispered that they were worthless, as Colden's power to give them, derived from Governor Hardy's commission, must have lapsed six months after the king's death. Judge Chambers, quite unnerved, could only beg the attorney general to bring no criminal causes before the court.

Before this, however, on the 19th of October, the *Alcide*, ship of war, had brought the new governor's commission. Robert Monckton, Viscount Galway's second son, had entered the army when a boy, had been in active service ever since in many parts of the world, had stood by Wolfe at Quebec, and now was major general and governor of the province of New York at thirty-five. As has been said, his appointment had preceded his commission by several months, and he had spent the interval in garrison quarters on Staten Island, often coming up to town in informal fashion, where he had made many friends and attracted much attention, and where his investiture with the Order of the Bath by Sir Jeffrey Amherst had been an occasion of great brilliancy and interest. There was in consequence every prospect of an unusually happy administration, and it was disas-

trous that Colden's aversion to even a mild opportunism prevented his reaping from this fortunate circumstance any advantage either for himself or the government he idealized. Instead, his relations with Monckton were exactly what one might have expected them to be under the circumstances. It was the custom for the governor-elect to produce his commission in council and then follow it with his instructions, which were headed by a list of the men qualified to swear him into office and so referred to in the commission. But on the day which Monckton himself had named for his inauguration, there was a failure of the usual sequence, and Colden promptly asked the reason. The reason was that no instructions had arrived, a fact that Colden afterward solemnly declared he had been unaware of until that moment, further asserting that even in his surprise he had said nothing to which exception could be taken. Smith, however, flatly contradicted this statement and told Monckton that Colden had known all beforehand and had planned to prevent his taking the oaths. But to Smith's delight not a man joined the retiring president in questioning the legality of the proceedings, and the oaths were administered without delay.

Now, whether he knew of the missing document before the council meeting or not, Colden was certainly in the right. The instructions were an important part of the colony's constitution, a governor's chief guide, and there was no reason why Monckton should not have waited for them. On the other hand, Colden had little natural tact and his manner may very well have been irritating. Even had it been otherwise, however, the result would probably have differed little. Monckton was young, he was socially approachable, he had no uncomfortable schemes for putting things to rights, and he knew so little about colonial administration that he was not above taking the advice of as many as felt in a position to give it. Therefore he was received with enthusiasm; he was dined by the "Gentlemen

of the Bench," by the corporation of the city, and by the "Gentlemen of the Bar," to whom, with much astuteness, he had already given a "most elegant entertainment"; addresses full of self-congratulation on the advent of a governor of birth and position, and without a word of his predecessor, were eagerly tendered. Then, not having once spoken to Colden in private, but having publicly intimated his disapproval of his course in regard to the judges' commissions, he sailed away from a throng of well-wishers for the conquest of Martinique after an administration of nineteen days.

This was hard to bear. Colden had made an excellent governor and his bitterest foe had accused him of no worse crime up to this point than his determination to execute the laws as he had found them. His conduct had been dignified, and it had been impossible to note any of the small rigidity of the days when he had advised Clinton. But the ascendancy of the Delanceys was now fully merged in the ascendancy of the lawyers, and the lawyers had determined that Colden must fall. They could congratulate themselves on their success. Smith had been in the closest touch with Monckton, and so well had he used his opportunity that not only had Colden been ignored, but Monckton gladdened Smith's heart by announcing that he had altered a generous plan which he had formed in regard to the rewards of government. According to the usual instructions, during the absence of a governor his representative received half of his salary and *of* the perquisites and emoluments of his office. The second "of," however, had been merely interpolated by a clerk in the employ of the Board of Trade, for what reason probably none living knew. But there was no doubt of the fact, for the clerk himself had told Governor Burnet and Burnet had told Colden, who now proposed to use his knowledge to some advantage. It seemed that Monckton, without, of course, knowing anything of the original instruc-

tion, had determined, in effect, to carry out its provisions and resign all but half of his salary during his absence. Instead, he wrote asking Colden what he proposed doing about the profits of government while acting governor. Colden replied that he would dispose of them as the king might direct in Monckton's instructions. Monckton considered this answer unsatisfactory, and wrote to say that he would not leave until he had a better. Colden replied again that instructions differed, and that he could not presume to make any proposition himself; but he did beg the governor to remember that he had only just met expenses when the total receipts of the governor's office were his. Later on the same day in the council he repeated that he could say nothing about the matter until he saw the instructions, exasperating Monckton to such a degree that the meeting was dismissed in a hurry.

Somewhat alarmed, Colden then went to Mr. Watts, a member of council and Oliver Delancey's brother-in-law, to ask his assistance as the only person whom he knew who was also intimate with the governor. Watts promised to do what he could, and together they composed an agreement by which half the profits of government were to be paid to Colden and half to the deputy-secretary in trust for Monckton. This Colden sent to the governor, but in place of an answer he received what Smith called a "tripartite indenture." By the terms of this document Colden while in charge of the administration was not to receive a penny of the profits under the penalty of £1000. Everything was to be paid to the deputy-secretary until Monckton's return, when, if instructions of the same import as Hardy's had meanwhile arrived, the receipts were to be divided between governor and lieutenant-governor. But if the instructions were found to be different, Monckton was to have all. The truth was, Smith had very smartly surmised that Colden would attempt to secure a more regular compensation

for his office and had determined to circumvent him by the second proviso. Colden in his reply, conveyed through Mr. Watts, ignored this and based his refusal on the insult to his character and dignity involved in the details of the agreement.

Smith next drew a bond by which again, if Monckton's instructions resembled Hardy's, the income accruing to the governor's office was to be paid to Colden, but with the understanding that he render Monckton a strict account of his receipts. Indeed, he was to account on oath, if required, and blanks were left for the amount of security and penalty. Before this was sent, even Monckton asked why it was necessary to require an oath. He was told that, as he himself would be chancellor, he could not make use of the Chancery Court, as could every other subject, in order to get his rights. But when Watts saw the agreement, he insisted that before its submission to Colden the words "on oath" should be eliminated. He added that it was so unnecessary to ask security that he himself at any time would let the lieutenant-governor have twice £2000 on his single bond. Smith, however, considered this another refusal from Colden, and when Deputy-Secretary Banyer returned the papers, he was so disgusted and enraged that Mr. Watts but just kept him from throwing everything into the fire. Instead, he found a new way of irritating his victim and ordered Banyer to demand a full list of the lieutenant-governor's commissions and land grants since Delancey's death. Banyer said he was sure Colden would sign if the desired alterations were made, and asked if he should get the list anyway. Smith replied: "You will obey your orders and bring back the draught of the bond, that I may compare it with the copy, that it may be executed." Whatever Banyer understood this ambiguous direction to mean, Colden did sign. He wanted to as little as ever, but common sense argued that a half was better

than none, and he feared that Monckton had determined on his suspension in case of his continued refusal, a fear only too well justified by the facts.

Thus Monckton went away satisfied[1] and Colden could only relieve himself by an occasional description of Smith as he and others saw him, — "a crafty, malicious smoothed-tongued hypocrite"; [2] and by making that plea for the remuneration of the lieutenant-governor which Smith had foreseen. In writing to Pitt and the Board of Trade he did not forget to state that he had no salary at all except when the governor was away, but he only asked for the erasure of that interpolated *of*. This would, in a governor's absence, divide the salary and give all perquisites to the acting executive, who had done the work and so was entitled to the fee. He also offered for consideration the fact that the purchasing power of the colony currency had been declining ever since the establishment of the fees to be asked for the governor's services. Yet the fees and other perquisites had not been changed. He appealed to Hardy if it would have been possible to live on half of his income. Yet the necessaries of life cost three times as much as they did in his day. On these simple statements he rested his case.[3]

On the 24th of November, 1761, the assembly had met. Once more Colden was to fight a legislative duel, this time, thanks to Monckton, against greater odds than ever before. His opening plea for equal, immediate, and free justice, with its characteristic gang at both bench and bar, was answered merely by generalities. The assembly longed to bring him to book by demanding his proofs; but this tempting inquiry was abandoned, says one in their confidence, because it was thought undignified. They

[1] On his return he apologized to Colden, returned the bond and took his word for his accounts.

[2] Colden Letter Books, I, 137.

[3] *Ibid*, 128, 129, 132–141. Smith's History, II, 360–364.

managed to say, nevertheless, that it was not more universal justice but a proper regulation of the cost of all governmental services that was needed. Special attention was called to the large fees for land grants demanded and obtained since Delancey's death by the Coldens, by the father as governor and the son as surveyor general. But Colden refused to be drawn into a defence of his honesty just then, and after an evasive reply and a plea for a larger salary for the chief justice, the work of the session began.[1] Again the two bills which Colden had twice rejected were made ready, and while the council debated them as sent up from the assembly, the assembly considered the annual civil list. This salary bill as finally framed granted the usual salaries to the judges only on condition of their acceptance of commissions during good behaviour; and according to Smith it was supposed that Colden would reject it, though it granted him £2200. Yet at the same time he says that it was feared that Colden would pass the bill that formally altered the tenure of the judge's commissions, commission Prat, who had arrived in town, accordingly, and leave the other judges as they were. But why any one should have thought that he would pass a bill against his avowed principles and then reject another which alone would have secured him any advantage from the first, Smith does not explain. However that might be, the council, Colden says at his suggestion, called a joint conference and proposed that the bill relating to the commissions be amended to provide fixed salaries for the judges to be appointed under the new tenure. The assembly refused to consent to this, and then Colden visited the council and "meanly" implored their assent to the salary bill.[2] This assent they gave, though not until he had consented to the entry of his request on the minutes; whereupon the assembly begged the council to drop

[1] Journal of the Genl. Ass. of N. Y., II, 669, 672–673.

[2] Smith's History, II, 368.

the bill relating to the commissions. Their request was granted, while the third bill, legalizing the acts of the legislature between the death of George II and its announcement in America, was also lost and never heard of again.

The consideration of one important bill remained, — a bill authorizing the partition of land grants and in its provisions somewhat similar to the one Colden had successfully opposed forty years before. Colden had always fought for accuracy in the land office, and, if strict accuracy had been insisted on, the large grants whose partition was desired would have been quashed on the score of many irregularities in their purchase. Colden realized, however, that while many of these had been purchased and extended by intentional fraud, others equally illegal in form had been bought in good faith by their present owners. Hence, as it was clearly impossible to maintain mathematical exactness in the system with any degree of equity, he told Smith *père* that he would sign the bill provided certain amendments were made. Smith agreed to this condition, and what was practically a new bill was prepared embodying Colden's suggestions. In this way he secured the survey of the tracts by the government surveyor, and though the result was not made binding on any one, it would at least give the administration certain definite information for future use. Still, ever cautious, Colden sent the bill to the ministry as soon as it was signed, commenting on it fully, and pointing out that he thus gave plenty of time for the arrival of its disallowance before it went into effect.[1]

With this the session closed and Colden betook himself to the congenial task of impressing the new Secretary of State, Lord Egremont, and his other official correspondents, with the danger of allowing the assembly to force a governor to appoint a chief justice as they wished. With Prat unsalaried and forced to

[1] Colden to the Board of Trade, Letter Books, I, 155–158.

return to Boston; with the other judges refusing to act; with Monckton rebuking him in public for his firmness; with the new governor of the Jerseys complying as he had refused to comply, it was possible, he hinted, that even he might yield. As the only remedy for the situation he begged a salary for Prat out of the quit-rents. But as he was writing there came another instruction to be added to those lately arrived for Monckton, and forbidding him on pain of removal to appoint a judge save on the tenure of the king's will. The Board of Trade, moved by Colden's letters, had made a representation to the king with this result. Unfortunately, this real triumph was marred by other things which they had said about the rapacity of the land office, in the elaborate refutation of which Colden was straightway absorbed.

It was this moment that fate pitched on as proper to finish Colden's negotiations with Pownall, the candidacy of whose friend, Mr. Burke, for the London agency of the New York assembly, he had so glibly promised to manage. At first confident of success, when his own commission arrived, in writing to thank Pownall for his share in that favour, he said that Mr. Burke's chances were less fair than they had been, as there was a disposition to retain Mr. Charles through pity for his lack of other resources. Pownall, nothing if not direct, at once communicated his correspondence with Colden to Charles himself. He was, he assured him, innocent of any intention to injure him, as well as convinced of his perfect fitness for the position he occupied. Mr. Charles, with equal promptness, despatched his information to the assembly's Committee of Correspondence.[1] Here it gave real satisfaction. The lieutenant-governor's commission, conveying, as it apparently did, the ministry's approval of Colden, had rankled. To be able to trace it to his own

[1] Smith's History, II, 370–371 and 389–390; Letter Books, I, 38, 82, 84, 107.

machinations was a joy. Colden, it was now remembered, had proposed that the assembly join him in appointing a new agent; but he had said nothing of a candidate, and his proposition had been laughed at and treated with the contempt it merited. No governor could recommend or nominate an agent for them. It seems, indeed, that, as they said, Colden must have known this; but their satisfaction in ascribing his commission to his "low craft and condescension" was ill-timed. For many years he had approached the object of his desire by the most unimpeachable methods without success, and if observation and experience had at length convinced him that these were useless, the event certainly proved him to be right. If his offer to get a small place for the friend of a subordinate English official had procured him, in less than a twelvemonth, that to which he had so long proved himself entitled in equity, at least part of the blame for his offence must rest on others. But no one wanted to make his excuses, and his unpopularity became greater than ever, so great that Chief Justice Prat, whose learning and uprightness no one seems to have disputed, was subjected to a petty persecution solely because he was his friend.

Prat had been the only judge who had acted in the January term; yet, when the assembly met in March, it showed no disposition to give him a salary and, being a comparatively poor man, he felt that he was no longer justified in giving up an excellent practice without compensation. He proposed, first, however, to give the assembly fair warning, and though he delayed in deference to Colden, who was filled with dismay at the mere suggestion of his departure, he finally sent the following letter to the speaker: —

"New York March 15/1762.

"Sir,

"I presume it is well known to you and every member of the Assembly that all the Justices of the Supreme Court except

myself have either resigned their Commissions or refused to officiate.

"That in reality there are no Salaries granted to the Judges of that Court, consequently that the people of this Colony can have no reasonable Expectation that any Gentleman not instigated by sinister motives and qualified for such trust will accept any Commission for that Purpose.

"Neither you Sir nor any one acquainted with the nature and value of the Essential Rights and security of the People can be insensible of the great mischiefs and dangerous consequences of being without a Supreme Court of Justice.

"To obviate these evils I have alone sacrificed my time and interest to preserve the existence of that Court.

"But it now becomes indispensably necessary for me to go to Boston and be absent from this Colony, until the Situation of my Affairs can permit me to return which cannot possibly be in a short time. As the Assembly are now sitting I think it my Duty to give notice of this, that you may see how necessary it is that some provision be made for some other Judge or Judges of that Court.

"Be so good as to communicate this to such members & in such manner as you shall think proper.

"I have nothing further to add but only that whatever hereafter may be the Event, I shall have the satisfaction of having done my Duty and I hope that you will do me the Honour and Justice to admit that no ill consequences that may perhaps happen in this Respect, can be imputable to

"Your Humble Servant

"B. Prat"[1]

To this the Speaker replied:—

"Sir

"Your letter of the 15th Instant I received yesterday. It is

[1] Letter Books, I, 174–175.

well known to the members of the General Assembly that all the Justices of the Supreme Court except yourself have resigned or are about to resign their Commissions & the Cause of such Resignation is as well known but from whence that Cause has proceeded is not so well known and here not proper for me to inquire into.

"I can't but think there are handsome enough Sallaries granted to the Judges of the Supreme Court and granted in such a manner that the Colony can have a right to expect that Gentlemen not instigated by sinister motives and qualified for such a Trust may accept Commissions for that purpose. The Members of the General Assembly seem very sensible of the value of the essential Rights and Security of the People, the concern for which has occasioned their granting the Judges Sallaries in the manner they have, and of the great mischief and dangerous consequences of being without a Supreme Court of Justice, but as it is not in their power to appoint Judges they think themselves not justly chargeable for any mischievous consequences for want thereof.

"I have communicated your Letter to several Gentlemen of the General Assembly who seem to be of opinion to make provision for the Judges Salaries in no other manner than they have except better Reasons be offered than they have yet had.

"As I have never had any impeachment of your honour or Justice or any imputation to you of Ill consequence attending such an event as you mention I shall leave you in the entire satisfaction of having done your Duty which upon Reflection I believe will be very great to you. I am with Sincerity Sir

"Your humble Servant

"W. Nicoll.

"New York 16 / March 1762."[1]

[1] Letter Books, I, 175–176.

## III

THE session giving rise to this exchange of courtesies had been summoned by Colden for March 3, 1762, in response to a requisition of Amherst's. Amherst had asked that the colony provide for the levying, clothing, and paying as many volunteers as it had raised the year before, he himself offering an additional bounty of £5 to each man enlisting and 20*s.* to the officer recruiting him. He asked also a provision for recruiting the regulars, and Colden announced that he had been assured that Parliament would be strongly urged to make compensation for this unexpected outlay. At the preliminary negotiations for peace held at Versailles the previous autumn, France had been distinctly unpleasant to deal with and it was thought wise to try the effect of at least a demonstration of force in bringing her to terms. It was for this Amherst wished to use the regulars who had been serving as a kind of frontier guard, and the volunteers were necessary to fill their places. Colden knew, however, that it was going to be difficult to get the assembly to comply; and even his spirit must have been broken by the long strain of the winter, for, in addition to his public troubles, his devoted wife had died in January, while the illnesses of two daughters, one of which had terminated fatally, had deprived him completely of his greatest relaxation and solace, — the pleasures of family life. Yet Amherst's demands were not considered excessive, and their refusal would only spring from reluctance to do anything that might bring Colden credit, and the fear of a standing army inherent in the American colonist. At the same time every man of them wished that the conquests of the war in America should be kept, and no one wanted to be responsible for annoying the ministry on the eve of the final treaty. Still, after expressing astonishment and disappointment at the necessity of fresh effort when they thought

they had reached the heights of success, the question was debated long and furiously. The result was a compromise. The same number of volunteers was called for, but their bounty being reduced a third, the odds were against their number being completed, while even this concession was largely due to the influence of Robert Livingston. Livingston told them that, if they advanced the amount desired as a loan and Parliament failed to pay, at least it could never ask more; whereas, if the government kept its obligations, no dangerous precedent would be established.[1] This argument seems to have been astonishingly convincing and the loan was made. Moreover, though the assembly stated that, with their traditions and principles, it was impossible directly to vote the means for recruiting the regulars, they were moved by the circumstances to give the commander-in-chief of the army a sum of not more than £4790 for the use of the service, this also to be repaid by Parliament when it suited the king.

But the members had scarcely reached their homes, after the breaking-up of the session, when Colden was obliged to recall them. The volunteers, he told them, owing to the reduced bounty, were coming in slowly, and New York, usually ahead, was now lagging far behind the other provinces.[2] The assembly differed with him. The bounty even now was more than that offered by any other colony, and the ranks were filling up well with nearly a month more in which to enlist. They also refused his request for a law impressing the vagrants with which the country was overrun, because such a law would keep them out of the province, and they would never enlist. This was, at all events, remarkable reasoning, but the assembly were as firm as if they were logical.[2] Colden, equally firm, gave them twelve

[1] Smith's History, II, 372.

[2] Journal of the General Assembly of N. Y., II, 700–701.

days in which to think the matter over. They met again on the 19th of May, and at once sent a private message to the lieutenant-governor stating that the difficulty in completing the volunteers, a fact they had but just denied, sprang from the general conviction that they were to be sent to the West Indies with the regulars. If the assembly was assured that such was not the case, it would at once increase the bounty. Colden promised to communicate this to Amherst; Amherst, through Colden, assured the assembly that the volunteers would be used on the continent only and would be returned to their province as soon as their service was over; the bounty was increased and the quota of volunteers completed.

But there was no need for the fear existing in some quarters lest the assembly might be thought to have yielded to Colden's importunities for Colden's sake. Had the position of the political leaders not been sufficiently indicated already, the first issue of a new publication, *The American Chronicle*,[1] would have defined it effectively. This *feuilleton*, which could boast the most influential sponsors, left the press the day before the assembly met in March. A biting arraignment of the whole system of colonial government, it could not have been more sweepingly critical had Colden been a Cornbury or a Cosby instead of a hard-working servant of the crown, and, according to his lights, of the people. All during that winter and spring, though he never halted in his hunt for illicit traders, though he never winked at any refusal to obey an impress warrant, though, after the declaration of war with Spain, he took care that no New York merchant should feed or clothe or arm the Spaniards, in his execution of the law he ever chose the broadest interpretation possible and was quick to see where its pressure could be lightened.

Questions such as these kept him busy enough, but as a back-

[1] Colden to the Board of Trade, Letter Books, I, 186–192.

ground to these and all other subjects, filling in interstices, connecting persons of different classes and matters of alien import, absorbing the population as it was perhaps absorbed in no other colony, was the interest in land. With the practical end of the war and the exit of the Frenchman and his painted allies, had come the proclamation of Amherst, throwing open the vacant lands on the northeastern frontier. There followed a rush for patents unprecedented in the experience of the land office. Preference was to be given to the officers who had served in the war, but with the king granting patents, and ordering that others be granted, to Englishmen who had never seen America; with New Hampshire encroaching daily; and with some of the great patentees enlarging their bounds insidiously but continually, it was most difficult to keep systematic preference in view. That there should be some who asserted that Colden even thus early in his administration had looked well to his own profits in the matter, was perhaps inevitable, and it has been seen how their accusations were taken up by the Board of Trade. But, whether they were right or not, — a question that must wait for discussion, — Colden's determination to use his opportunity to systematize the records, to safeguard the Indians, and to compensate the crown must ever redound to his credit.

The return of General Monckton from his successful Martinique campaign brought these varied activities to an end, and gave Colden what would have been to most men a welcome respite from a petty struggle. Yet, so full of ambition was he still, that he turned with but halting step from the confining labours and the doubtful honour of his official position to the real dignity of his private life. Two things at least he had accomplished: Chief Justice Prat had a salary from the quit-rents, given, however, in a sort of secretive fashion; and before the April term Horsmanden and Jones had consented to be

second and third judges of the Supreme Court respectively, on the old tenure. But there remained so much to be done that he hated to withdraw his hand and step aside.

As it happened, his retirement was to be short. In less than a year Monckton was on his way to England to recuperate his health, and Colden was once more left in his place. He found the situation slightly changed. Prat was dead and Horsmanden was chief justice; David Jones, William Smith *père*, and Robert Livingston were the puisnes; and all had been given commissions according to Governor Monckton's special instructions. The question of an independent judiciary was thus to an extent eliminated from politics, and, although the effects of Pontiac's rebellion made it necessary to apply to the assembly for assistance, during the next year and a half Colden's time and interest could be devoted almost exclusively to the still-growing land problem, and the even more vital question of the maintenance of the British trade laws. Conservative of the conservatives as he was, he saw clearly whither England's exclusive policy was tending, and ventured to suggest once more that she was doing no one any good, but possibly doing herself an injury by her repressive methods.[1] When Colden criticised ministerial judgment never so faintly, it was time to give pause. But he might as well have spoken to the wind. His plea for a return to the old tradition when the provincial attorney general had been a man of weight, a lawyer whose large private practice showed general respect for his skill, was also left unheeded, and England's legal representative in New York continued to be a man to whom no one else deigned to intrust his affairs.[2] On the other hand, the ministry had listened to complaints of the fee system, complaints nearly as old as the province itself, and had seized this inopportune time to direct an investigation

[1] Colden to the Board of Trade, Letter Books, I, 312.

[2] Colden to the Earl of Egremont, Secretary of State, Letter Books, I, 230.

of the subject in a way that might easily have been interpreted as a reflection on the provincial officers.[1]

Indeed, the haphazard character of English colonial government never had been more clearly illustrated. Deaf to the most appealing petitions for intelligent support, credulous of criticism of its most loyal servants, fussily exacting where it should have been liberal, and apathetic where it should have been most interested, the wonder is how Colden's patience had endured so long. In all points connected with land it was the same. Prayers for interference in glaring abuses would be ignored, and the merest tittle-tattle would result in the rebuke of a faithful official. This was especially disastrous in New York, where, as Colden had realized from the first, the influence of the great landowners was a supremely important social and political factor. Yet, though it was notorious that the lords of a manor returning a member to the legislature had engaged in land grabbing on a most outrageous scale, and had almost brought on civil war with a neighbouring province, it is doubtful if a royal rebuke had ever reached them. But Colden persisted, and was now using every argument to secure instructions to break the gigantic patent of Kayaderroseres in western New York, while trying finally to settle the eastern bounds of the province, where New Hampshire claimed all the land that had been selected as especially suitable for the "reduced" officers.

Still, on the whole, those eighteen months were comparatively peaceful. Constant criticism there was, but it had all been uttered before and had become almost a matter of routine. Moreover, though the colonial legislators came together in September, 1764, with certain real grievances weighing on their minds, for once, apparently, no one thought Colden even indirectly to blame. It was now many years since the law known as the Sugar, or Molasses Act, had aimed at prohibiting trade

[1] Letter Books, I, 343, 348.

with the foreign West Indies; yet it had never seemed so oppressive. There were reasons enough for this. Many governors had executed the law so loosely that it had almost been forgotten; Colden, whether he liked it or not, attempted at least absolutely to enforce it. Before the conquest of Canada the fear of the French had kept settlers away, had absorbed the energies of many inhabitants in schemes of clandestine trade, and, in general, had restricted commercial enterprise. On the other hand, the wars had brought with them compensating gains for the American merchant. The king's money had come into the country in comparatively large quantities, privateering had been highly successful, and the contractors employed by the assembly had grown rich. But now the rapid growth of the country and its expanding energy were being blocked by an increasing pressure which had its source at Westminster. For, not content with those already existing, Parliament had lately been creating new restrictions on colonial trade. A law preventing the exportation of lumber to Ireland promised a time when linen, that luxury of even frugal housewives, would be a rare possession, while another practically prohibiting the issue of paper money in the colonies, notwithstanding the good service it had done England in the past, had brought with it serious consternation.[1] But far more disturbing had been the reports of the London agents telling of the ministry's plan to tax the colonists themselves, on their legal transactions, their journals, their purchases, by means of stamps. That the proceeds of the tax were to be devoted to extinguishing the debt incurred in the prosecution of the last war in America made this promised overthrow of custom, of tradition, of the principle they had been taught to consider one of the foundations of

[1] In 1759 the colonies had by means of paper money raised £150,000 for the use of the General of the army. Journal of the Genl. Ass. of N. Y., II, 798.

the British Constitution, no whit less insupportable to those who read and heard. At first, at least, they did not question the right of Parliament to do as it proposed, but they resolved almost sadly to do what they could to convince their English brothers that its exercise was inexpedient in every respect.

To men in this temper Colden made a pleasant speech announcing the complete success of Sir William Johnson with the rebel Indians, which had culminated in a great peace meeting at Niagara; praising the generosity which had contributed so largely to this event, and voicing the approval of the king. Now at last the colony was free to pursue the arts of peace, and as a practical measure he suggested a renewal of the bounty on hemp. The assembly expressed hearty pleasure at his news. "But nothing can add," they proceeded, "to the Pleasure we received from the Information your Excellency gives us, That his Majesty, our most gracious Sovereign, distinguishes and approves our Conduct. When his Service requires it, we shall ever be ready to exert ourselves, with Loyalty, Fidelity, and Zeal, and as we have always complied in the most dutiful manner with every Requisition made by his Directions; We with all Humility hope, that his Majesty, who, and whose Ancestors have long been the Guardians of British Liberty, will so protect us in our Rights, as to prevent our falling into the abject State of being forever hereafter incapable of doing what can merit either his Distinction or Approbation. Such must be the deplorable State of that Wretched people, who (being taxed by a Power subordinate to none and in a great Measure unacquainted with their circumstances) can call Nothing their own. This we speak with the greatest Deference to the Wisdom and Justice of the British Parliament, in which we confide.

" Depressed with this Prospect of inevitable Ruin, by the alarming Information from Home, neither we nor our Constituents can attend to Improvements conducive either to the Interests of our

Mother Country or of this Colony. We shall, however, renew the Act for granting a bounty on Hemp, still hoping that a Stop may be put to those Measures which if carried into Execution, will oblige us to think, that nothing but extreme Poverty can preserve us from the most insupportable Bondage.

"We hope, your Honour will join with us, in an Effort to secure that great Badge of English Liberty, of being taxed only with our Consent; to which, we conceive, all His Majesty's Subjects at home and abroad equally entitled, and also in pointing out to the Ministry, the many mischiefs arising from the Act, commonly called the Sugar Act, both to us and Great Britain." [1]

Here was the opportunity of Colden's life. He need only have said that he thought the assembly were justified in their protest and he would have attained the admiration of Americans everywhere. Nor was there any reason why he should not have said so. In the main he agreed with every word that had been uttered, agreed, and understood, understood as no governor over from England for a few months or years ever could have understood, and the tone of the whole address was above reproach. Its point of view should have appealed to him, at least to some extent, for he had the capacity to appreciate it. But his loyalty was too bigoted, or his memory too keen. He would send their address, he replied with stiff propriety, to those better qualified to judge of its contents, but England had done so much for them, they should wish to do everything possible in return. Still, he added, though he considered their method of seeking their end irregular, he would do nothing to hinder them, and even wished that the proceedings might tend to the benefit of the province. It must be remembered also in Colden's favour that he knew the authors of the address as we do not. He knew their politics, their unscrupulousness, their petty tyranny. He knew, for instance, that they were still determined to alter the

[1] Journal, etc., II, 749.

tenure of the judges' commissions; that they pretended to be actuated by fear of arbitrary removals by ambitious governors; and that in their petition for the desired change they had declared that the vast powers of the New York judges filled the inhabitants with fear. But he remembered that they had ignored his offer to make arbitrary removals impossible, and he could not but know that the judges would be still more terrible when responsible to no one and dependent on the legislature for their salaries. Yet the language of their petition might have led the ignorant to suppose that they were seeking their countrymen's good with a single mind. How did he know that they were more trustworthy now? Indeed, he could not know, and it was perhaps for that reason he had refused to sign the three petitions that soon were sent across the sea to king, Lords, Commons, respectively.[1]

In these fine appeals the representatives of the province stated their grievances and asked for redress. But not for themselves only did they plead; it was for Great Britain herself that they asked the most careful consideration, for that great empire, more vast and powerful than any yet known to fame, into which she might expand through the unrestricted development of her colonies. Pity it is that the splendour of the vision failed to stir that young king, with his vaulting ambitions, his dislike of ministers, his wish to rule by himself alone. Here was a people with whom personal loyalty was a sentiment just beginning to have strength, who were willing and probably able to govern themselves, who were prouder daily of the name of Englishman, and who promised eagerly to spread the advantages and share

[1] There is no doubt, however, that Colden failed to appreciate the spirit of the address itself. "The Assembly of this Province in an address to me," he wrote Edward Sedgwick on September 21st, "have expressed their Sentiments, in respect to being Taxed by a British Parliament, in a manner, which I think disrespectful and even indiscreet."

the burdens of their inheritance. Why did he not reduce the unwieldy colonial system of his day to the simplest terms, and, allowing the colonists the fullest measure of self-government in their internal affairs, with all the commercial privileges of Englishmen, develop a sort of personal union, each member sharing the benefits of peace and war alike?

## IV

In truth King George III considered the point of view of his American subjects not at all; but before their petition had reached him Colden was deep in a controversy[1] in which he needed all the influence and prestige acquiescence in the assembly's purposes would have brought him. His enemies, however, were so resourceful and so determined that he should have neither influence nor prestige, that it is probable they would have found some way to turn his action to his discredit. The present controversy sprang from a suit for assault brought in the October term of the Supreme Court by one Thomas Forshey against one Waddell Cunningham. The jury found for the plaintiff, and when the defendant, on the last day of the term, asked his lawyers to apply for the right to appeal to the governor in council, as he considered £1500 damages excessive, they refused point blank. This was suspicious, for they had themselves decided to appeal if the case went against them. Cunningham, nevertheless, was obliged to get a notary public to make the motion. The court took until the next morning to decide, and then Cunningham's counsel condescended to advise a new motion to set aside the verdict. This was refused; a petition in writing from Cunningham's partner and attorney, asking liberty to appeal and offering a bond with security to

[1] Colden Letter Books, I, 395–398, 406–419, 421–425, 441–442; Journal of the Genl. Ass. of N. Y., II, 786 and 795–806.

abide by the decision, met a similar fate; and, finally, permission was denied to put this last refusal on the minutes. Cunningham's partner, Mr. Robert Ross Waddell, next appealed to Colden for an order to the judges of the Supreme Court to bring the case before him in council. Colden sent for the attorney general, showed him a copy of the 32d instruction directing the governor to permit appeals to him in council, and asked him to make out the proper writ. Kemp said the only writ he knew anything about was a writ of error. Now a writ of error involved the verdict only, and, as then understood, had nothing to do with the merits of the case. It was designed to call in question a flaw in the legal handling of the decision of the jury, in the sentence, as it were, but it considered not at all the means by which that decision had been reached. An appeal, on the other hand, took cognizance of everything between the crime and the fixing of its penalty, points of fact and points of law alike. This it was that Cunningham wanted, for though, strictly speaking, he had found fault with the amount of his damages, this had been based on a verdict which he considered unjustified by the facts. He accordingly refused any substitute, and Colden promised to call a council the next day in order to put the matter before them.

The council met. Colden presented his facts with no contradiction from Judges Horsmanden and Smith, who had been on the bench at the trial, and then read the 32d instruction. The council asked for copies, but plainly were opposed to taking any action in the matter. Nevertheless, Colden told them that he thought it his duty to issue the writ, adding that of course they would have an opportunity to refuse their approval later. But when the writ was applied for, it was found impossible to get a lawyer to advise its composition. In fact, the whole fraternity was getting in line to oppose the appeal, and when Colden at length signed a document composed with as much

technicality as possible under the circumstances, he knew he was challenging the wealth and power of the province, with no reason whatever to expect help from abroad. Such disregard of consequences in the cause of duty was sheer gallantry in a man of nearly eighty. Yet he never thought of holding back once he had defined the situation to himself; and the greater the odds against him, the more reason he saw to fight. If both lawyers and landowners had decided that the decision of one provincial court must be final, it was, he thought, an unnecessary proof that their schemes would not bear publicity, and that the honest poor or the king himself could have little hope for fair play should their interests clash with those of these powerful classes.

The writ, with another ordering a stay in the execution of the Supreme Court verdict, was made returnable on Wednesday, November 14th, and on that day Chief Justice Horsmanden produced them in council and announced that he could have nothing further to do with them. Fourteen days had been insufficient for the transcription of his reasons, and he begged to be allowed to present them at a later date. His request being granted, after frequent consultation with the leading lawyers in town, on the 19th of December he addressed the council with an imposing array of heads and subdivisions. In the first place, he said, England permitted appeals from the decisions of judges only, and not from the verdicts of juries. Hence, as, with certain well-defined exceptions, England's law was the law of her colonies, there should be no departure therefrom without a very good reason. That reason the 32d instruction did not give. It used, to be sure, the word "appeal"; but appeals in common parlance had come to mean writs of error, and before 1753 the instructions had read "appeal in cases of error." Even this instruction directed the governor to issue writs *in the usual manner*, and as only writs of error had been

issued, this would indicate that they were surely meant. Finally, the judges of the Supreme Court, who were also members of council, were to have no vote in cases of appeal, plainly indicating that their own decisions were in question. For all these reasons, in Horsmanden's judgment, no court of appeals existed, and there were a dozen reasons why none should. The vast expense of recording cases, the delay in deciding them, the elimination of the invaluable criterion of neighbourhood knowledge in estimating the veracity of witnesses, the demand on the time of governor and council, and even of king and council — for the instruction permitted the submission of cases to the third court if the verdict of the second was also unsatisfactory; all these consequences of a court of appeals seemed to him insuperable objections to its establishment, and in deference to his oath he must refuse to obey the writs.

A month later, in a letter to the Earl of Halifax, Colden showed himself able to meet Horsmanden at every point; but for the present he contented himself with giving a few brief reasons why he thought the instruction referred to a court of appeals. He next proposed the following question to be answered by the lawyers, who, with several army officers and many townsmen, had come to listen to the debate: "Has the King by the 32d instruction given an appeal in all civil causes from the courts of common law to the governor in council and made the governor and council a court for determining such appeals?" Having had this reduced to writing, he read it the second time and then laid it on the table, where it was read again by all the members present. But when Smith *fils* had said he would not answer it, and Mr. Scott that he would if he thought proper but not if forced, and there had been much whispering between lawyers and members, the latter refused to second Colden's proposition and put the question. Throwing parliamentary usage to the winds, Colden moved that this refusal and his question should

be entered on the minutes. At this Mr. Scott laid his hand on Oliver Delancey's shoulder and drew him aside. More whispering followed, and when they had returned to their seats and Colden had scored the impropriety of members entering into private conversation with those who were not members while a debate was in progress, Delancey remarked that Mr. Scott had informed him that it was highly irregular to enter a question that had not been put on the minutes. There was a chorus of assent from the members, and then Colden literally took the question from the table and put it in his pocket with the oracular statement, "Then I know what is proper for me to do." This brought Smith *fils* to his feet to say that, if the court would permit him to state a question, he would answer it himself. The court being willing, he sat down at the table and wrote something which, after correction by Scott, proved to be the following: "Can a Court be legally constituted by the Crown in this colony to hear civil causes in the way of appeal from a common law court according to civil laws upon the whole merits, re-examining evidence in controlling the verdict?" This question it was promptly voted to put to Messrs. Livingston, Smith, Jr., Hicks, Scott, and Duane, all of whom except Mr. Hicks, who was out of town, answered in the negative. Finally, in order that there should be no doubt about any one's position, Colden asked the attorney general whether the 32d instruction had constituted a court of appeals. He declined to answer the question as put by Smith, but, when allowed to put his own query, said the instruction did not constitute such a court, but rather a court of errors.

Still, the subject was far from closed. On the 12th of December Judges Smith and Livingston presented their reasons for refusing to consider the appeal, and on the 2d of January Colden, who had meanwhile been scanning every legal volume within reach for illuminating instances, gave the board the

result of his investigations. Early in December he had sent Halifax an excellent reply to Horsmanden's objection. It seemed impossible, he said, that there should be no remedy against a possibly mistaken verdict save the will of the judge, who might or might not grant a new trial, while, on the other hand, a judgment on an unassailable verdict could be set aside because of some technical flaw. Horsmanden's argument from English precedent he disposed of in short order. If it was impossible for the king to do in America what he could not do in England, what would become of the colonial governments, all differing from each other and from England in legislative and administrative forms developed from royal charters. The Supreme Court of their own province, for instance, had all the powers of the three English courts of King's Bench, Common Pleas, and Exchequer, and it might well be doubted if the king could establish such a composite court in England. Yet the common law was the source of justice in both England and her colonies, and the whole controversy sprang from a confusion between the law itself and the manner of executing it. Again, the expression, "in the Manner which has been usually accustomed," did not necessarily apply to appeals from that place; the expense of lawsuits might be diminished rather than increased by a check on the present abuses; and it was manifestly absurd to say that the council must sit every day to hear appeals, when the Supreme Court itself barely sat three weeks in a year, and there was no reason to suppose that the number of cases appealed would be large. Since Colden had written thus, the other judges, Livingston and Smith in semi-public speeches and Jones by letter, had lined up with Horsmanden; yet his researches convinced him he had taken the only tenable position.

The 32d instruction read: "Our will and pleasure is that you, or the Commander in Chief of our said Province for the Time being, do in all civil causes, on Application being made to you,

allow appeals from any of the Courts of Common Law . . . unto you . . . and the Council . . .: and you are for that purpose to issue a writ, in the Manner which has been usually accustomed, returnable before yourself and Council . . ., who are to hear and determine such Appeal; wherein such of our said Council as shall be at that time Judges of the Court . . . whence . . . Appeal [lies] . . . shall not vote upon said Appeal; but they may be present at the Hearing thereof to give reasons given by them. . . . Provided . . . the . . . value appealed for . . . exceed three hundred pounds sterling; and that Security be first . . . given by the Appelant to answer such Charges as shall be awarded, in case the first Sentence be affirmed; and if either party shall not rest satisfied . . . our will and pleasure is that they may then appeal unto us in our Privy Council, provided the value exceed five hundred pounds sterling, . . . and good security given by the Appelant. . . . Provided . . . where matter . . . relates to taking or demanding any duty payable to us, or to any Fee of Office, or annual rent, . . . you are to admit an appeal to us in our Privy Council, though immediate value [be] . . . less. And it is our further pleasure that . . . execution be suspended, until the final Determination of such Appeal . . . unless . . . sufficient security be given by the Appellee to make ample restitution . . ., in case . . . such judgment . . . [be] reversed." The 33d instruction proceeded: "You are likewise to admit appeals unto us in Council, in all cases of fines . . . for Misdemeanors, provided the sum amounts to two hundred pounds sterling, the Appellant first giving good security. . . ." Therefore, ran Colden's argument, if for appeal you were to understand "writ of error," the American would have no relief whatever in a suit involving less than three hundred, or, in one case, two hundred pounds, sterling; whereas an Englishman could get a writ of error in a suit for forty shillings. An act of

Parliament regulated the security to be demanded in case of error; the instruction provided for the security to be given in case of an appeal. If they both meant the same thing, this was quite unnecessary. Again, the instructions ordered a suspension of proceedings in the event of an appeal; a writ of error in itself acted as a stay of proceedings. Finally, the English judges of high rank decided on the errors of their inferiors; if the 32d instruction gave the governor and council the power of correcting the technical mistakes of the judges of the Supreme Court, it would be authorizing a set of men, who might or might not have read a single legal treatise, to pass on the decisions of the leading lawyers in the province. If the word still remained doubtful, Colden added, the 33d instruction would surely make it clear, for how was it possible to tell whether a fine was excessive or not if the merits of the case were not to come up for discussion.

On the day when Colden gave the council his matured opinion based on these and many other facts, he held in his hand a paper to which he occasionally referred, and he had scarcely finished speaking before he was asked for a copy, a request that was repeated again and again. He did not grant it, however, until the next day, and then only with reluctance. He had, he said, merely jotted down a few notes to aid him in his purpose of presenting his point of view so clearly that it would be easy for the council to point out his mistakes, when by free discussion they might come to a mutual understanding. For this reason he was sending them the copy they wanted, but only in the strictest confidence. Hence it was with indignation that at the next meeting of the council he listened to a paper in answer to his notes, prepared by the lawyers, but concluding with what assumed to be the council's final judgment, a formal dismissal of the appeal. To make their position certain, moreover, the members at once adopted this dictum, ordering it read by a

unanimous vote. But after a vigorous protest by Colden, who claimed his right to be considered as part of the council and decried such a use of his notes, some members proposed withdrawing their statement, and then the meeting adjourned to the next day. The members now changed their tactics, and proposing Colden's old and discarded question as to the meaning of the 32d instruction, answered it themselves. The judges of the Supreme Court and the most prominent lawyers of the province, they said, had declared that the instruction referred to an appeal in error only, and therefore they, unanimously believing this to be true, could take cognizance of no other. Colden entered his dissent and said that he would refer the matter to the ministry; but when the members desired the lawyers' argument inserted in the minutes as the reason for their action, omitting, however, the clause assuming to be the council's decision, he remained passive, though he thought the proceeding irregular.

The lawyers had added little that was new and less that was convincing to Horsmanden's deductions, and Colden, indeed, held a logically impregnable position. Clearly, the instructions aimed at providing some relief from an unfair verdict, and while the method outlined might not have been ideal, there seemed little reason for such fierce opposition until it had been tested and found oppressive. Moreover, its opponents offered no substitute, and considering man's fallibility, something of the sort seemed absolutely necessary. Finally, the members of the council were at least as well able to deal with points of fact as with points of law, and few cases were likely to cross the Atlantic. But no one had forgotten Colden's refusal to sign the popular petitions of the year before, and no one paid very much attention to what he had to say now. Perhaps no one would have done so in any case. It was evident that the suits most likely

to be appealed were those instituted against the great proprietors by neighbouring landlords, or by energetic officials in behalf of the crown. Always in close connection with the judges and often the judges themselves, they hitherto had been so free to execute their schemes that the prospect of even an occasional check was most unpleasing. It was, therefore, a foregone conclusion that their powerful influence would be added to the more active efforts of their natural allies, the lawyers, to make Cunningham's appeal a unique event. Moreover, England's policy offered an easy way to win the popular support that had come to be a necessity for success. The right to appeal was coupled with the inability to import from Martinique or Guadaloupe, and with the possibility of a man being forced to pay something to the king every time he bought a newspaper, and so skilfully that it seemed as great a grievance as the other two. Colden figured in the press as a tyrant of sinister intentions, and an enemy to all liberty, while great pains were taken to inform the people of the progress of affairs in the way that seemed proper to his opponents. The proceedings in council were published; the chief justice's speech, with a preface by John Morin Scott, was prepared in pamphlet form especially for use in England; the New York *Weekly Post Boy* devoted a column to the subject under the heading of "The Sentinell," and later, these articles, supposed to be contributed, were issued separately and widely distributed. The text of all this literature had two parts: Colden was trying to undermine the English Constitution by eliminating the glorious privilege of trial by jury, and he was criminally erecting a new court. To be sure, Colden had answered the first charge with tolerable success. To be sure, also, when the instruction forbidding the establishment of any new court had been significantly read in council, he had expressed himself as unable to understand its significance and disclaimed any idea or purpose at variance with a

determination to carry out the instruction. But answer and protest were alike in vain.

Granted that the 32d instruction was obscure, said one contributor, a fact, however, that he would not admit, "Must not a man be as regardless of the honour of the Crown as of the liberty of the subject before he can venture on an interpretation which supposes the royal order to aim at altering the ancient and fundamental laws of the land?" The statement that the colonists were aiming at independence was declared absurd. If they possessed all the rights of Englishmen, they had no need of independence. If they did not, why should they prefer the British to the French or any other constitution? If, moreover, Colden's interpretation was sustained, and if the right of appeal in criminal causes should be added, "From such a system," it was solemnly avowed, "The Star Chamber would be a redemption." The most absurd attempts at wit were received with applause. The writ issued under such difficulties had directed the judges to lay aside all other matters and cause the proceedings to be brought before the governor in council. "What a most important cause is this," some one thought it worth while to write, "for the sake of which the judges must even desist from saying their prayers." It was smartly remarked that the new system had been proposed by "notaries, apothecaries, and old women," and "a droll fray between physick and law and celebrating the victory of the latter," amused many. The serious-minded writers, however, were the more truly humorous. "Pray who is the inflamer of the people,"[1] asked one of these in reference to a just remark of Colden's, "Cæsar, who says they are not entitled to any liberty, and deprives them of what they have, or Brutus, who tells his countrymen that Cæsar is a villain for so saying and acting?" "Surely no man can expect," said another, "to conciliate the good graces of the ministry by

[1] "The Sentinell," March 14, 1765.

representing them as having intended, what, if they did really intend, would render them highly criminal, and in all probability raise against them the indignation of a British parliament. I am rather inclined to think, that whoever has been prompted by views like these, would soon find himself to have overacted his part; and should such an event happen, I am confident it would not enhance the price of mourning a single farthing." A more fair-minded critic indeed acknowledged that the prevalent dissatisfaction could be traced to the fact that they lived under a government "the most free, the most equal, and the most happy" that had ever existed; but it is safe to say that Brutus and the Star Chamber made more impression on the *Post Boy's* readers.

Indeed, however necessary it was to paint the issues of the day in broad lines for the benefit of a not over-enlightened people, there is something so meretricious about the New York leaders and their utterances at this time that it is impossible to feel much sympathy with them. It was now not much more than two years since the representatives of the colony had petitioned the king for judges during good behaviour, because "such a plenitude of uncontroulable Power in a court, whose Determinations under so large a Sum are understood to be neither reversible by Writ of Error or Appeal, in Persons who cannot in the Colony be impeached, and whom there are no hereditary Lords here to try, is an Object beheld with Terror!" [1] Could inconsistency further go? Surely, such a change of opinion needs a more plausible explanation than an outburst of the spirit of Hampden and Pym. Moreover, though the fine patriotism of the assembly's petitions compels admiration, the more informal and probably more sincere statements of the Whig party show a disposition to bring England to terms or cast her aside, to disregard all reasons of sentiment for continued union, that was

[1] Journal of the Genl. Ass. of N. Y., II, 718.

the reverse of conciliatory and must have brought forebodings to the loyalists even then.

## V

THE ministry not complying with Colden's plea for prompt support, the rigour of his critics lost some of its vehemence, at least temporarily. But no sooner had he entertained hopes of a somewhat peaceful spring, than he received a ministerial rebuke because he had not assisted several gentlemen of the Fox connection as he should have done. Lord Holland, Lord Ilchester, and a Mr. O'Brien, who had married Lord Ilchester's daughter, had obtained a grant of a huge but undefined tract of land in the province of New York, and Colden was blamed for the fact that it was still unlocated. Keenly hurt as he was by all English criticism, he spent the next few weeks in settling the grievances of the syndicate and those of other Britons who wanted to be American landlords, and then left town for the summer. The tree-planted streets and flower-smothered houses made the little city look like a big garden, and aroused the enthusiasm of the travelling foreigner, but it was not considered a desirable dwelling-place in "the heats," and few of its wealthier inhabitants were without a near-by country place. Colden's work followed him to Long Island, however, and so rapidly did business relating especially to land grants accumulate, that a meeting of the council soon became desirable. But the members were in a notoriously bad humour, and Colden delayed the evil day until another storm broke about his head.

Despite his long-harboured conviction that the colonists were never far from rebellion, he had heard or seen nothing to make him think they were nearer than they had been, and had remained oddly ignorant of the bitter resolution which was

planning organized opposition from Maine to the Carolinas. It was now some months since the threatened legislation had become a reality. The Stamp Act had been passed, and soon after, astonishingly soon, considering the distance England then was from America, copies at a shilling apiece could be bought in all the large colonial towns, while newspapers and pamphlets offered the most radical advice for its treatment. But extreme language suited only to a supreme crisis had been used so long, that it is perhaps not surprising that Colden suspected nothing unusual. In July, indeed, he had ordered the Fort guard, which had been sent south by Gage in May, to be replaced by a detail of the Sixtieth Regiment of Artillery. He was probably also comfortably aware that their major, Arthur James, having formed certain opinions of his own, and finding the city's military stores scanty and in bad repair, had personally seen to their renovation and supply. Yet as far as he could observe, the people did not seem greatly agitated; the *Farmers' Almanacs*, issued earlier than usual on purpose, recorded the rates in a matter-of-fact way, and Mr. James McEvers, who had been appointed distributor of stamps for New York, had gone out to Flushing to offer his security with all confidence that the duties of the office could be executed. It was therefore with astonished dismay that, on the 30th of August, Colden received Mr. McEver's resignation. A week or so before, to the "surprize and joy" of the people of Boston, an effigy of a stamp distributor had been strung up on a tall tree in the High Street, and later, placed on a bier, carried about the town, and then burned on Fort Hill, the wood for the bonfire having been taken from a half-finished building destined to hold the stamps. This "a number of reputable people" levelled to the ground, while they broke the windows in the stamp distributor's house, permitted the crowd which had followed to enter it "in multitudes," and so frightened the man

himself that he resigned. Frankly averse to repeating his experience, McEvers chose to be discreet and resigned also.[1]

This was disurbing enough; but the same day General Gage wrote to say that he considered the insurrectionary articles in the papers most alarming, and to ask if he could be of any assistance. Action of some sort seemed imperative, and Colden, who had received no word from England on the subject, and who did not even know the name of the vessel on which the stamps were coming, went up to town and called a council. Only three members answered his summons on September 3d, and these announced themselves unwilling to take the responsibility of advising him; but a peremptory summons to the others secured a meeting on September 7th, and another followed on September 9th. On both occasions the members denied any necessity for the defence of the city, a denial confirmed by the city magistrates, while large and orderly meetings of the gentlemen of the town seemed to lend plausibility to the statement that there was to be no violence. Still there had been another big riot in Boston; the New Haven stamp distributor had been pleasantly asked if he would yield the stamps on their arrival, or have his house pulled down; it was said all about town that the stamps would never leave their ship; and the more

[1] Meanwhile the popular ardour was being kindled by such songs as the following:—

He who for a Post, or base sordid Pelf,
His Country betrays, makes a Rope for himself;
Of this an Example before you we bring,
In these infamous Rogues, who in Effigy swing.

* * * * * * * * * *

Those Blessings our Fathers obtained by their Blood,
We are justly oblig'd as their Sons to make good;
All internal Taxes let us then nobly Spurn,
These Effigies first — next the Stamped Papers burn.

Chorus: Sing Tartarara, burn all, burn all.

conservative of the New York weeklies, in congratulating the friends of Mr. McEvers, said that, though he had cleared himself from "the Imputation of joining the Design to enslave his country" of his own free will, it was probably "no more safe than honourable for any other to attempt it."[1] But Colden had done one or two things that made his mind easier. The day of his return to town a relief for the artillery regiment happening to arrive from England, it had been ordered into the Fort, and the garrison now numbered one hundred men besides officers; General Gage had received a suggestion of the desirability of quartering a battalion of regulars in the city barracks on the Common; and Colden had advised the receiver general, Captain Kennedy, to bespeak all vessels coming within Sandy Hook until he should discover the ship bringing the stamps, when he was to tell the captain of his danger and act as his escort until the cargo was secured.

The rest of the month of September passed in tolerable quiet, and Colden noted somewhat pathetically that he could walk the streets without receiving any marks of disrespect. There were many indications, however, that the excitement had not reached its climax. The governors of New Hampshire and Connecticut wrote begging Colden to take care of their stamps, while the friends of the New Hampshire distributor promised to leave him to popular vengeance should he presume to execute his office, and the Connecticut official was made to resign in a spectacular manner, one of the requirements being the repeated recital of the words "Liberty and Property." The distributor for Maryland, moreover, arrived in town, having fled precipitately from a mob which threatened to force his resignation, only to find every tavern door in New York closed to him, and himself obliged to ask a lodging in the Fort. Colden gave him a bed in his own house, but he refused to take care of

[1] Gaines's *Weekly Mercury*, August 19, 1765.

any stamps except his own, not feeling particularly desirous of any increase of responsibility.

About this time also Colden heard that the assembly in Massachusetts had issued invitations to the continental colonies to send representatives to a convention to be held in New York during the first week in October for the discussion of questions relating to the famous act. Whereupon he gravely pronounced it illegal and inconsistent with the Constitution of the colonies, as they were supposed to be distinct and independent from each other in government. But the men from South Carolina were already at the door, a week or more ahead of time, and Colden's protest was probably listened to by no one.

He made another vehement protest to the Secretary of State on the publication of an unusually seditious sheet styled the *Constitutional Courant*, curiously enough having sent an account of it to Franklin by the preceding ship in order that he might know all about it first, and in full confidence of his sympathy. The paper, it seemed, had not gone through the New York post-office, but had been delivered to the post-rider at Woodbridge, New Jersey, by James Parker, the well-known printer, from which point it had been distributed by him and other post-riders throughout New York and several other colonies. It was Colden's opinion that Parker had printed it on the refusal of another New York printer to do so, and he thought Franklin might be able to tell by the types.

At length, on the 18th of October, the good ship *Edward Davis*, containing the stamps and goods for various consignees besides, arrived at Sandy Hook, whence, successively escorted by a frigate, a sloop, and a man-of-war, it sailed up the Narrows and anchored under cover of the guns of the fort. The stamps were accompanied by no bill of lading or word of directions, and Colden called a council at once. Only three members attended, — Chief Justice Horsmanden, Judge Smith, and Mr.

Reid; and these refused to give any advice without a full board. If they should advise the detention of the ship, they said, every man with goods on board would want to sue for damages. They did suggest, however, that a sloop be hired to take off the goods, but there was no sloop to be had, and Colden was astute enough to refuse to impress one. Instead, he ordered the captains of the king's ships in the harbour to remove the goods in order to get at the stamps,[1] and by the 26th of October, all but three of the packages were safe in his Majesty's ship *Garland*, those three being so far down in the hold that their removal would have endangered the ship. There they remained one or two days and then were taken into the Fort at noonday without a guard and without any disturbance. The feeling of opposition, however, had never been more intense, and now it was opposition that felt itself supported and justified by the attitude of the whole Atlantic seaboard from the Kennebec to the Savannah. Not only had the Stamp Act Congress proved the colonial representatives to be one in sentiment, commercially at least, but the treatment of the stamp distributors showed that the people, New Englanders and Southerners alike, were inspired by a common feeling, North Carolina, Pennsylvania, and Rhode Island also having by this time made it certain that the officials selected for that purpose should not distribute a stamp within their borders. When the stamps were coming up New York Bay every merchant ship in the harbour dropped her colours, while that night notices threatening all persons handling them were posted on the doors of all public offices, at street corners, and in the coffee-houses. Indeed, the inhabitants were planning to give a cold reception to British consignments in general. Many gentlemen had promised to import nothing whatever until Great Britain should realize her mistake; a Homespun Market was to be held once

[1] Colden Letter Books, II, 48.

a week in the New Exchange, and Dorothea in the city, with less patriotism perhaps than her Puritan cousins would have shown, was already writing to Phyllis in the country that she was to be forced to make a fright of herself.

Yet all this did not prevent Colden from quietly making ready with the aid of his son David to put the stamps in circulation on November 1st, the day appointed by the law. Here he undoubtedly made his great mistake, and nothing shows this more clearly than the very different line of conduct followed by the governor of Massachusetts. Reports having been circulated that this official was going to distribute the stamps, he called his council together and told them that such a report was absurd. It was true he was going to have the stamps placed in the Castle, which he was going to strengthen with every means in his power; but he was certainly not going to make himself ridiculous by assuming the responsibility for so much valuable property. He said, moreover, that he was going to strengthen the Castle for two reasons, — to prevent insult to the king, and to save the town from having to answer for the stamped papers.[1] This was common sense, and Colden would have done well to follow the example of his brother executive. There was plenty of time for this, for the Boston governor had made his decision nearly two months before. But, as has been said, Colden had other plans, and his son even went so far as to ask the ministry for the office of distributor of stamps, though people were saying that in the London coffee-houses they were betting a hundred guineas to ten that the bill would be repealed when Parliament met in November, and though the master of the ship bringing the stamps was so infected by the prevailing spirit that he humbly apologized for what he had done.

Impossible as it may seem, two circumstances occurred in

[1] Gaines's *Mercury*, September 16, 1765.

October which promised to make it even more difficult for Colden to force his point on November 1st than it would have been a month earlier. It seems that after the council of New York had refused to have anything to do with his appeal, Waddell Cunningham had petitioned the king in council to hear his case. The matter was referred to the committee for hearing appeals from the plantations, and they had reported that, as appeals only lay to the king in council from his council of New York, the proper procedure must be maintained, and Cunningham's application was refused. The privy councillors, however, had been impressed by Colden's careful information, and they ordered the council of New York to hear Cunningham's appeal.[1] Their order reached New York in October, and on the 9th Colden, having first communicated it to the council, issued writs to the same effect as those that had so disturbed the province the year before. The same day Cunningham's attorney also applied to the Supreme Court for permission to appeal to the governor in council, asking besides that counsel be appointed to assist him. The judges asked what right he had to do so, and when he showed Cunningham's power of attorney, said that this was not sufficient, and even if it was, they could not grant his request, as there was no proper writ authorizing them to send up the records, and they were not empowered to assign counsel where they had no jurisdiction. Here for a time the case rested; but meanwhile the popular resentment at Colden's course in the affair was boundless, and though other news gave the enraged citizens some satisfaction, it did not lessen their abhorrence of the lieutenant-governor.

## VI

It was now known to every one that Sir Henry Moore had been appointed governor-in-chief of the province, and might be

[1] Colden Letter Books, II, 39–42.

expected at any moment. Colden, therefore, could enjoy his somewhat tenuous honours little longer, and for this reason he delayed the renewal of his oaths of office as long as possible, such renewal being enjoined on all officers of government on or before the last day of October. But when the 31st at length arrived he complied with the law. It happened, however, that this law had not been sent over that year as was customary, and one Supreme Court justice at least said that this freed Colden from all obligation. Indeed, the lawyers had determined that he should not renew his oaths, and when he chose to do so, as did also every other governor on the continent, they promptly showed their disapproval. By promising to see that all laws were enforced, he had in effect promised to enforce the Stamp Act, and almost at once placards appeared in the Merchants' Coffee-house, and at street corners which accused the lieutenant-governor of having "bound himself by an oath to be the Chief Murderer of the Rights and Privileges of the People; to be an Enemy to his King, his Country, and Mankind," [1] and threatened him with death in case he attempted to keep his word to the letter.

The excitement in the city had become intense. All sorts of rumours were afloat, and that very morning a man had come to Colden to tell him that there was a plot on foot to bury Major James alive that day or the next. He said he had the tale from a certain shoemaker, and Colden at once despatched him to the mayor for examination; at the same time informing that magistrate that he had heard there was to be a riot the next day, and exhorting him, with the other magistrates, to join in keeping the peace. The next day, the 1st of November, the magistrates sent word to Colden that they themselves feared a mob that night, and their fears were thoroughly realized. About six o'clock every gamin in town, with many privateers and dis-

[1] *Ibid.*, II, 460.

banded soldiers and the riffraff of the population generally, assembled under the direction of some leaders of a better class, and divided themselves into two parties. Of these one went to the "Fields," where on two gibbets they suspended two effigies, one of the governor, with a drum on his back and a label on his chest, and holding a stamped paper in his hand, and one of the devil. The other party also had a representation of the governor which they placed in his chariot. This they dragged around the town by torchlight until, after being joined by the other party, they proceeded to the Fort. Here, saluting the effigies with wild shouts and jeers, they battered down the gate and emptied the coach-house. But the soldiers were looking on quietly from the ramparts, many of the gentlemen of the town had gathered in the background, and a stranger could have thought it was some popular spectacle that was being enacted. Finally, the mob turned toward Bowling Green. Here they tore down the palisades, and, making a bonfire of these, with Colden's chariot, his two sleighs, and his sedan chair, they burned the effigies of the lieutenant-governor and his evil companion. The major part of the crowd would now perhaps have turned home satisfied, but the blood of the leaders was up, and within an hour the mob had destroyed one of the finest houses in town, the house which Major James had just remodelled for his own use and filled with books, pictures, and objects of art such as few colonial homes could boast; while his beautifully laid-out garden, with the summer houses in which his wife had planned to take so much pleasure, was reduced to a dust heap.

The next day an unpleasant-looking crowd filled the streets, and rumours of every description the air. People said the Fort would be stormed that night, that the mob had said they would kill every one in it, while letters and messages brought Colden the agreeable news that he was going to be hanged. Now and

again prominent townsmen came to the Fort with various schemes for the solution of the difficulty, and toward evening a party of these proposed that the lieutenant-governor give his word to make no effort to distribute the stamps, but to leave them where they were until some decision should be reached as to their further disposal. This request Colden considered but another step in the plot. His interlocutors knew perfectly well, as he said later, that he could not have found a single man willing to receive a single stamp; so that for him to execute the function of distribution was clearly an impossibility. Yet, if he answered them in the affirmative, he, even he, was liable to rebuke from that government which in its days of greatest laxity could never be depended on to demand only the possible from its servants. Nevertheless, he had observed the temper of the mob, and he took what seemed the lesser risk. The word was passed out into the rapidly darkening streets that the lieutenant-governor would leave the stamps alone; gradually the mob slunk away, and quietness settled down on the town. But two days later the mob raised a new demand. They wanted the stamps put on one of the British ships in the harbour, and, though such a demand seemed quite unreasonable, Colden communicated it to Captain Kennedy. Kennedy said the idea was impracticable, that the season of the year would soon oblige the ships to tie up at the wharves, and that the stamps were far safer where they were. Then again the crowd filled the streets and the threats of the preceding days were renewed. Colden, who reflected with pride that with nearly a hundred soldiers on hand on the 1st of November, he had not given a single order for resistance, though one round of shot might have subdued the people, now felt that the policy of non-resistance had been given a fair trial. He therefore ordered all the guns of the town that commanded the Fort spiked, and, all the officers in the neighbourhood having gradually joined the

garrison, prepared to defend his position with energy. His action was perceived with the most venomous criticism, and an absurd libel that opportunely left the press that very day was received with happy credulity.[1]

It will perhaps be remembered that when Colden, as a young Philadelphia physician, had returned to Scotland on a visit, he found himself in the midst of the famous uprising known as "the '15." He had made the journey down from London in the company of an old friend, Lord Jedburgh, afterward Marquis of Lothian. They found themselves in perfect agreement on the part their country should play, and some weeks later, when Colden was sitting one Sunday in his father's little church, a note from Jedburgh was handed him telling of the arrival of a body of Highlanders in the neighbourhood, and asking him to raise a company to oppose them. Colden soon brought together seventy or eighty men, the largest number recruited by any one man that day, and took them to meet Jedburgh at Kelso, where they did good service until the order for retreat was given. How these facts had furnished the basis for a charge that Colden had fought against his king, it is impossible to say. Yet Governor Cosby had proposed to make such a charge part of a general indictment with a view to the surveyor general's enforced retirement from office. Moreover, when Horsmanden, who had been a guest at Colden's home for weeks at a time, and had heard this story among other family traditions, fell out with the Clinton administration, he wrote an article in a party paper, calling Colden the "Rebel Drummer." Naturally, to him Colden ascribed the revival of the canard at this time. Naturally, also, he felt that the man had a fair record whose enemies were

[1] Copy of a paper sent to the Secretary of State, indorsed: "A Narrative of some facts relative to Mr. Colden occasioned by a Libell Printed in New York, Nov. 4, 1765, which it is believed the Printer was *really* compelled by force to Print." Colden Letter Books, II, 63.

obliged to seek material for their pamphlets and catchwords for their followers in a long disproved incident fifty years old.

Meanwhile, the merchants and magistrates had continued their efforts to bring about an agreement, which meant, being interpreted, that the mob should get whatever they might decide to ask. This, it seemed, was nothing less than the stamps themselves, and on the morning of November 5th, representatives of the common council came to the lieutenant-governor and asked him out of mere compassion to propitiate and quiet the mob by giving the packages into the custody of the mayor and his associates. Colden said that he would seek the advice of the council before replying. But to the council he said that if the magistrates could enforce quiet alone, they could enforce it much more with his assistance, and he suggested that such evident submission to a mob's caprice would only bring increased demands. The council took a different view. It would be impossible, they maintained, for the mob to take the Fort. Yet there was danger of their attacking it, and if so, the loss of life involved in its necessary defence would be great. They therefore advised him to yield. But though Colden often said that he would have been glad to shift the charge of the stamps in the beginning, when by so doing he would have been accounted mad, he hated to succumb to intimidation. When, however, General Gage, to whom he next applied, seconded the advice of the council, he felt no longer justified in refusing. After making a statement of his position, he delivered up the packages on the mayor's receipt; the stamps were placed in the City Hall, under a small guard; and the mob quietly and finally withdrew. The popular notion of the provincial, as opposed to the city, government could not be more forcibly illustrated. The provincial government was a foe because it considered itself bound to execute the laws; the city government was a friend because it saw no such necessity.

Eight days later Sir Henry Moore arrived, and Colden, turning over his residence as well as his command with military promptness, retired to the house of his grandson, Stephen Delancey, where he remained until the 18th of November, frequently going about the town and meeting with no discourtesy. Then, escorted to the ferry by a number of personal friends, he retired to Spring Hill, his home at Flushing. Here he settled down once more with his books about him, his quiet life interrupted once a week by a dinner at Jamaica with old associates from town. At these dinners politics were tabooed; but Colden had not himself bidden them good-by, and on the 13th of December he sent a "State of the Province of New York" to the Secretary of State and Board of Trade.[1] In this interesting study, dividing the population into four classes,— the great landowners, the lawyers, the merchants, and the farmers, — he discusses their relation to each other, to the provincial government, and to Great Britain itself, illustrating his conclusions from the controversies of his own administration, and supplying data for an impartial judgment of the non-importation agreement of the Stamp Act Congress. His suggestions, offered in another letter, were an English attorney and solicitor general and judges from England also, with one complete regiment to maintain law and order. In this way, he thought, the government might ride the crisis he now believed at its height.

It is interesting that the man who is held responsible for the Stamp Act, the man who at this time was at the head of the British government, held much the same point of view. Indeed, between Colden and Grenville there are many parallels. The same lack of imagination, the same disregard of expediency, the same fearlessness, the same belief in the prevalence of a governmental ideal under any conditions, characterized them both. But Colden had broader sympathies, a wider culture, a

[1] Colden Letter Books, II, 68–78.

more developed civic sense, and, where his prejudices did not operate too strongly, a more progressive standpoint than had Grenville. It is true, he read the revolutionary tendency in America as the manifestation of the spirit of anarchy, of revolt against justified authority, roused in willing minds by self-interested demagogues. But there was much to justify this view in that province where the colonies had first felt a common interest, and the beginnings of union had been laid. How unfit for understanding a frugal, honest, religious people were the bribe-taking, hard-drinking, card-playing rakes in Parliament has been shown. But piety, honesty, and industry had not been conspicuous attributes of New York's leaders from Judge Morris on, nor were they more characteristic of the earlier champions of liberty. Their escapades had often only been restricted by meagreness of opportunity, and up to this period the presence of men of proved integrity in party councils was rare enough to be noteworthy. Colden had long been wise enough to foresee the Revolution; he had, perhaps, been wise enough to select some of the remedies that would have prevented it; and it would have taken a far wiser man than he to have predicted the quality of its success from its beginnings as he saw them.

Meanwhile, Sir Henry Moore had been cultivating popularity. The improvements Major James had introduced into the Fort were removed, the stamps were left where they were, and, showing himself about town in a homespun coat, the badge of the Sons of Liberty, the new governor went in person to the coffee-house which was their headquarters, to publish anything he thought might be of interest to them. Naturally, under the circumstances, he failed to show even formal courtesy to his predecessor, while in his first speech to the assembly he never mentioned the Stamp Act, though he earnestly requested aid for the sufferers from a fire at Montreal. Nor did he interfere in any degree with the business of the following session, which,

despite the fact that some of the members were supposed to be in active sympathy with the rioters, was conservative in tone. The committee appointed the year before to correspond with the other colonies having made itself responsible for the part New York had taken in the Stamp Act Congress, the assembly hastened to approve its action, and then, having dismissed it with thanks, appointed another to address king and Parliament in petitions adapted to the colony's special needs, but resembling the congressional petitions as closely as possible. Indeed, the members were too conservative to please some outside, and an anonymous letter signed "Freedom," and purporting to be from a man of the people and a Son of Liberty, was voted by the representatives it criticised to be "Libelous, Scandalous and Seditious." They also offered a reward for the discovery of its author. Yet on one point they must have believed him to be right-minded, for, while he had only suggested that they deduct enough from the lieutenant-governor's salary to "Repair the fort and on Spike the Guns on the Battery," they went so far as to ignore the fact that it was due, and displayed a sustained and ever increasing bitterness toward their former chief.[1]

On November 28th it was ordered that the great committee for courts of justice, which was in fact the committee of the whole, should consider the illegal attempt which had been made during the recess "to deprive the Inhabitants of this Colony of their ancient and undoubted Right of Trial by Peers,"[2] and on December 14th the committee reported. The Supreme Court justices had informed the governor and council on November 12th that they could not send up the records unless in a case of error, but the committee even opposed appeals of that sort, because, forsooth, the House of Lords was the highest court in England for such appeals, and for an American to be

[1] Journal of the Genl. Ass. of N. Y., II, 786.

[2] *Ibid.*, 787.

obliged to turn to the Privy Council was unjust discrimination. Their report, however, was devoted exclusively to appeals from the verdict. They were illegal, they violated the rights of the subject, they would prevent justice, they promised the ultimate ruin of the colony. It, moreover, appeared to the house that Cadwallader Colden had done his utmost to give success to this dangerous innovation, and had filled the mind of his Majesty's subjects of New York with jealousy and distrust. On the other hand, the justices of the Supreme Court, the council, and Cunningham's lawyers had done well, and merited the approval of all lovers of their country. Colden thought public censure of this sort deserved a detailed reply, and began at once an account of the principal controversies of his administration.

Before he had finished it, however, in February, 1766, he was startled by receiving a letter from Mr. Secretary Conway.[1] Conway had been one of the English opponents of the Stamp Act. Nevertheless, he now expressed the disapproval of both the king and his servants, because Colden had, on the 2d of November, 1765, promised to do nothing further until the arrival of Sir Henry Moore. Why he should have said this on Tuesday, when he had said on Saturday that he would do everything in his power to execute the law, was a puzzling inconsistency that they could not but condemn. A month later Colden was still more astounded by the information that Archibald Kennedy had been superseded in his office by the king's order, because of his conduct concerning the stamps as revealed in Colden's letters. Once again, could imbecility further go? To blame an old and devoted servant of the crown, who had dared the utmost unpopularity by his persistent loyalty, merely because he had, on the advice of his council, promised not to do what he could not have done in regard to certain stamps,

[1] Colden Letter Books, II, 94–96. Copy of Mr. Secretary Conway's letter to Lieutenant-Governor Colden.

about which he had not received a single order, was outrageous enough. To blame another because he had refused to take these stamps, knowing that if he did, he would probably be forced to surrender them, was more than outrageous. Besides, when Kennedy refused to take the stamps on his Majesty's ships, he not only knew that when the vessels were put up for the winter the stamps would become an easy prey, but he knew that in the meanwhile his wife's property and his, which consisted of large holdings of improved real estate, would not be worth a straw if he yielded. His duty certainly had not seemed to demand such a sacrifice; but England evidently had no inclination to master the circumstances, and it was not strange that her censure struck in the wrong place.

Her rebukes were the more extraordinary because of her own conduct; for as summer approached public and private reports of the doings of that session of Parliament brought the news that the colonies, apparently, had won. The Stamp Act was repealed, and New York was soon rejoicing as enthusiastically as she had protested. The reaction of the strain of the past months was complete. Expressions, material and verbal, of gratitude to Parliament, of devotion to king and country, of kinship with all true Britons everywhere, abounded, and, like the rest, New York was too excited to observe that other act of Parliament in which the full right to tax the colonies in all ways whatsoever had been asserted. To Colden the whole thing seemed preposterous, and it required all his accumulated reverence for authority to assume a wisdom he could not see in the government's action. To be intimidated into the repeal of an act before attempting its enforcement, and while reiterating its propriety, was to him incomprehensible, and promised increased difficulties in the future.

It is now conceded by historians generally that there was nothing illegal about the famous bill, that Parliament had a

perfect right to pass it, and that the distinction made between external and internal taxation was superfine. It is, none the less, considered a measure so blundering, unstatesmanlike, and inexpedient that it was quite as unjustifiable as if it had transgressed the law. But, as has perhaps been sufficiently pointed out, frequent blunders marked England's colonial policy. Had the government long before taken Colden's advice and established a highly centralized colonial bureaucracy, strong enough and independent enough to enforce its commands, or had it decided to allow a system of self-government, exacting merely a sort of general allegiance, in either case issues would have been defined, and people would have known where they stood. It is true that George III and some of his ministers would have been quite capable of upsetting any and all existing regulations, but the breach would have been obvious, it would have stirred a clear-eyed and authoritative opposition appealing to the best elements in all the provinces; it would, in short, have been met as like transgressions were met at home.

Besides his general disapproval of the repeal, Colden must have noted that, while he had been blamed for refusing to oppose his own advisers and a mob combined, the whole government, king, ministry, and Parliament, had capitulated three thousand miles away. But if he thought this unfair, he did not say so, and quietly turned his attention to obtaining some financial redress. Parliament had passed resolutions to be sent to the colonial governors, directing them to require their assemblies to compensate all officers of government for their losses in the late riots. Colden, placing his own losses, ascertained on oath, at £195 3*s*., and to these adding the £400 of salary due him for the last two months of his administration, sent the account to both governor and assembly, asking Moore to put some special emphasis on his case. Moore did noth-

ing of the kind, however, and while Major James, who had so infuriated the inhabitants by bringing the howitzers into the Fort, received his damages by a majority of one vote, and all other applicants received theirs, Colden's plea was passed over in silence. Hopeless of redress in America, the aged lieutenant-governor then asked a pension, reminding the ministry that it could not be for long. With his application he enclosed a proclamation of Sir Henry's, offering a reward for the apprehension of seven men guilty of high treason. These men, Colden explained, were tenants and farmers who, rendered desperate by the oppression of interminable lawsuits, had taken advantage of the general excitement, broken open a jail, and threatened the persons and effects of some of the great landowners. Whereupon Sir Henry had issued his proclamation, and the Twenty-eighth Regiment had been sent to quiet the little rebellion. Far from justifying it, Colden simply called attention to the method of its treatment, as contrasted with that in use in a certain late event. Yet November, 1766, came with the first anniversary of the famous riot, and Colden had not received a penny or a word of commendation for his devotion to the government. Surely, as he said, here was little encouragement to loyalty. He knew that it had been asked in Parliament if he were not generally disliked, a question that caused him much bitterness; and he knew that many defamatory papers had been sent to England. Therefore, in the hope of leaving an unsullied reputation to his children, he at length sent his completed vindication to his old friend Collinson, with full directions for its distribution. A hundred and twenty copies were to be printed, and of these twenty were to be sent to Colden, and a hundred were to be given to members of Parliament and other officials named in an enclosed list.

In December the assembly met again, and Colden was surprised by receiving a letter from the speaker asking him why

he did not send in his accounts. Colden replied with much dignity that he had thought the compensation to sufferers by the riots was to be a free act of gratitude to Parliament, and that repeated application, making it less voluntary, would be disagreeable to the house. His salary he alone regarded as a debt. But this the assembly again refused, because, they said, the lieutenant-governor had brought his losses on himself. Colden's conduct having been what it was, the connection in sympathy between legislators and mob was evident. Colden wrote of their decision to Shelburne, and when, on May 15, 1767, the House of Commons addressed the king, begging a mark of his royal favour for those governors and officers who had distinguished themselves in the service of crown and Parliament in the late disturbances in North America, every one in New York thought that Colden was meant. Yet a third autumn came around and still he had heard nothing.

But it was only his good fortune that lagged. Despite all his care, his vindication, consisting in the main of a narrative of facts susceptible of proof by the records, had been reprinted in New York, and had caused as much indignation, as if self-defence was a despotic act. The copy, it was said, had been furnished the printer by a son of one of the judges. However this might have been, shortly after its publication the Supreme Court met, and on the tenth day of the sitting, as the jurors were walking up to the City Hall expecting to be discharged, Judge Livingston met them and asked if they were going to present the vindication. According to current gossip they had repeatedly been urged to do this during the session, but had always refused. They now refused again, and though Livingston told them they would not be discharged until they yielded, they repeated their refusal in court. But when Judge Livingston handed them a copy, and Chief Justice Horsmanden charged them to present it, they did so in his own words, stig-

matizing it as "a very vile, infamous, false and libellous Reflection on his Majesty's Council, Assembly, Courts of Justice and the whole body of the Law in this Province." [1]

In all this Colden saw some faint ground for encouragement. There seemed little doubt that the smuggler was flourishing in the land as he had not flourished in years. He was smuggling, too, in the grand manner, and his manipulation of whole cargoes from Holland, and ship-loads of wine, would have made the old hands stare. The merchant thus had as much reason as the big landlord to fear the law, and for a grand jury composed largely of merchants to oppose its leading exponents for so long a time, proved to Colden their possession of strongly conflicting opinions, and he felt less disheartened than he might otherwise have done. There was more to follow, however. On November 17th the assembly met, and on the 22d of December Mr. Livingston, having read certain passages in a pamphlet entitled "The Conduct of Cadwallader Colden, Esquire, Late Lieutentant Governor of New York, relating to the Judges Commissions, Appeals to the King and the Stamp Duty," [2] commented vigorously thereon, and then moved that a committee be appointed to examine the contents of the publication and discover its author and publisher. The motion was carried, and Livingston was empowered to carry a message to the council for the appointment of a joint committee of investigation. Mr. Smith, Mr. Roger Morris, and Mr. Watts were accordingly added to the assembly's appointees, and one week later a report was presented. This not only reaffirmed Livingston's censures, but submitted many more, and according to it the pamphlet contained "the most malignant aspersions upon the inhabitants of this colony in general," and tended "to destroy the Confidence of the people in two branches of the legislature and in the officers concerned in the due administration of justice; to

[1] Colden Letter Books, II, 131–142, 146–150. [2] *Ibid.*, II, 429.

render the government odious and contemptible; to abate that due respect to authority, which was so necessary to peace and good order; to excite disadvantageous suspicions and jealousies in the minds of the people of Great Britain against his Majesty's subjects in this colony; and to expose the colony in general to the resentments of the Crown and both houses of parliament." Counter-vindication, accordingly, seemed imperative, and a committee was appointed to refute the charges of the pamphlet, to discover its author and publisher, and to suggest the nature of their punishment. On the 14th of January, 1768, this committee summoned and examined Colden's son, having examined his son-in-law and others before; and the day after its leading spirit, Mr. Livingston, left town and was seen no more during that session. But the report of the joint committee was published the day before the January session of the Supreme Court; and on the last day of the assembly's session, when but a bare quorum was present, a series of resolves were presented and passed which embodied the charges contained therein.

Colden's position would have been hard enough had he been twenty years younger. Three years before, he, the lieutenant-governor, had been set up in the public prints as a target at which he who pleased might aim. "These pretended patriots of liberty," he had said, "have boldly asserted things well known in this place to be false, published them here, & made use of their being published in this place as an argument of their truth." Yet his first attempt at retaliation, or rather, for it was scarcely that, of simple self-justification, was charged by the grand jury of the province with being a vile libel. When it is remembered, however, that the government, for which mistakenly or not he had risked all, had now let considerably more than two years pass without adding a word to Conway's letter and that this fact was known to every man in the province; that William Smith, that "patriotic Billy," who was recognized

as a leader of the Sons of Liberty, had since been made a member of council; and that Oliver Delancey who, though he liked the Independents little, liked Colden less, was at that very moment popularly supposed to be telling tales to the Duke of Grafton, to whom he had access through a cousin married to Colonel Fitzroy, it is not hard to understand why Colden was accorded such scant respect. But it is hard to understand the mental processes of such a government. As Colden wrote to Mansfield:[1] "I make no doubt your Lordships Compassion would be moved in the case of any private person under such malicious undeserved persecution but my Lord when the case is of a virulent Faction against their Governor for performing his Duty in supporting the Authority of the Parliament & the Dependence of the Colony of Great Britain, a neglect of Protection must be of most dangerous example & deter every officer of the Crown from his duty. In truth this has in a great measure been already the Case. Even private men think it imprudent to speak their Sentiments whereas had they who think they owe obedience to the parliament of Gr Britain been properly supported the opposition had been silenced before this time. Whatever the wisdom of the Ministry may suggest to be the true policy of Great Britain with respect to her Colonies they never can think it good policy to deliver up their faithfull servants supposing they may have erred in Judgment to the violent resentment of a virulent Faction who stood in opposition to the Authority of Parliament."

## VII

Colden undoubtedly deplored such idiotic procedure, for the sake of the government even more than for his own, but it could have been, indeed was, no easy thing for a man of nearly

[1] Letter Books, II, 156.

eighty to find himself acknowledged nowhere. There seemed, however, to be some slight indications of a reaction in popular feeling. The pamphlet was plainly the production of a man of strongly conservative, but not bigoted, opinions, and it was favourably received by many. It was eagerly bought and widely read, and the observing soon detected a slight change in the tone of coffee-house conversations. "Why was not the lieutentant-governor summoned to council meetings?" people began to ask, and when they heard it was because he might be mobbed, there were many who retorted that he would run no such risk unless the council itself wished it. But a more convincing proof of reaction was to be found in the elections. The old assembly having expired by the Septennial Act, and writs for a new one having been issued, the "Whig Interest," as it now began to be called, was surprisingly unsuccessful at the polls. Two "republicans" were defeated in Orange County, one in Kings, and one in Westchester, where the successful candidate was Colden's grandson, while only one of the four members for the city kept his seat, a Presbyterian lawyer being among those retired. Indeed, "No Lawyer in the Assembly," became a party slogan. But, above all, Judge Livingston himself, who desired to represent a constituency which had returned a member of his family for over forty years, saw early in the day that his case was hopeless and withdrew from the contest. Livingston's defeat had taken place in Dutchess County, and, significantly enough, another Livingston lost another seat in the same county at the same election. Now was the opportunity to bring a just judge from abroad, urged the lieutenant-governor, as eagerly as if his recommendations had ever been regarded: "I think you will no longer find it inconvenient to countenance me," he said as good-naturedly as though he had never been culpably neglected.

Certain changes in the ministry, however, now promised

better things for Colden personally. The Earls of Halifax and Hillsborough, after long retirement, were again in the government, and whatever may be said of their statesmanship, these men in their relations with America had been marked by an approachableness, an ordinary humanity that distinguished them from their sphinx-like colleagues. If a colonial asked a question of either, Halifax, because he was business-like, and Hillsborough, possibly because he felt it was one thing he could do, would actually answer it. Intercourse with them was intercourse, and not endless repetition of the same questions on the one side and a vast silence on the other. If we accept Conway's letter of censure, written before all the facts of Colden's conduct in November, 1765, were known, it took nearly three years to extract a word from the ministry that had stood sponsor for the Stamp Act, until Colden himself said that a refusal of his claims would be preferable. Even then Grenville's letter was perfunctory in character; but Colden had already written his first letter to Hillsborough, and little more than two months later, on the 9th of July, 1768, Hillsborough wrote Sir Henry Moore speaking of Colden in warm terms, and directing him to continue his efforts with the assembly in his behalf. But, though Moore did as he was told, he considered himself under no obligations to mention the reason, and Colden could not flatter himself that official approval of his career was the more patent to the average provincial. Moreover, though Moore presented Colden's account to the new assembly, of which Colden had such high hopes at the time of their election, they voted to give the lieutenant-governor his unpaid salary only. Their reason for refusing to make good his losses, Colden heard, were two. It was said, almost in the words of "Freedom's" libellous letter, that as Colden had spiked the cannon on the batteries and the assembly had been obliged to pay to unspike them, they considered that they had already

been at sufficient expense in connection with the matter; and it was whispered that if he had not said his losses were due to a mob, he would have fared better. To these arguments Colden replied in turn that the assembly had preëmpted the charge of the batteries from the government, and that, even so, the government would have unspiked them in time had the assembly not been in such a hurry; while, as to calling the rioters a mob, he should have thought that less objectionable than calling them the gentlemen of the town.

But the assembly were too absorbed in their own contentions to give heed to their own expressions. If the two parties knew distinctly what they themselves stood for, it is not a matter of record, and the session resolved itself into a struggle for leadership, whose rigours brought about a dissolution early in 1769. His opponents said that Sir Henry dissolved the assembly in order to give the Whigs a chance to recover themselves at the polls. His own reasons, however, were different. On the 21st of November Moore had reported to the assembly that, despite the vigilance of magistrates, a riot had taken place in town on the previous Monday. The house had at once resolved to pay the reward of £50 for the conviction of its promoters, which had been offered by Moore on his council's advice, and had thanked him for the opportunity to express their abhorrence of such methods. At the same time they could not forbear to state that they felt, in common with the rest of the colonies, "the distresses occasioned by the new duties imposed by the parliament of Great Britain, and the ill-policed state of the American Commerce." Moreover, on the 31st of December, roused by the action of Parliament in suspending the legislatures which had countenanced the non-importation agreement, the house entered on its minutes a series of resolutions affirming the rights of his Majesty's subjects in New York and asserting that taxation without representation would prove

harmful to the British Empire as a whole, that all the subjects of Great Britain were equal, that the power of the colonial legislatures could not be abridged, and that the right of petition and correspondence with whole colonies or individuals was theirs. Accordingly, a committee was appointed to correspond with the colonies and with their English agents. But, though Moore's affiliations had been with the Whig leaders, he was not prepared to countenance anything so radical, and in the first week of the new year he addressed them on the subject of their resolves. It gave him, he said, much pain to speak frankly, but he felt constrained to express his amazement at the opinions they had developed, some flatly repugnant to the laws of Great Britain, and others clearly intended to give offence where common prudence would have avoided it. For this reason he must declare them dissolved. At the same time he would put the best possible face on their conduct in his letters home.

An exciting campaign followed. The Delanceys, now looked upon as leading the conservatives, had nevertheless championed the resolutions, one of the family indeed having proposed an even more aggressive declaration. On the other hand, Moore, whose closest intimates were the Livingstons with their Whig proclivities, had done all he could to quash them. Thus it was difficult to place their followers. But there was no question as to the vehemence of the contest. Through his private secretary, Philip Livingston, Jr., Moore did all he could by threats and promises to put his friends where they wished to be. But their opponents were too strong for them. The older Philip Livingston, uncle of the secretary and speaker of the late assembly, was defeated, and his brother, Peter Van Brugh Livingston, as well. In fact, only six or seven Whigs found themselves members, and of these not more than three were men of reputation. Yet when the assembly met, John Cruger

being made speaker, Moore's request for the appointment of a London agent by act instead of by the assembly brought a prompt refusal for reasons which they said were improper to be given in an address. Both parties indeed now felt it so necessary to stand well with the people, who had learned their lesson for once and for all, that they could afford to differ little in their policy.

The Whigs, however, were thoroughly alarmed, and, led by the triumvirate, bent every effort to regain their lost prestige. To do this they went further than they had ever gone before, and all pretence of reluctance to separate from England died out of their counsels. They ventured to publish the most radical propositions, and six years before the Revolution, in the new weekly which they established as their party organ, offered their readers such visions as the following: "This country will shortly become a great and flourishing empire, independent of Great Britain; enjoying its civil and religious liberty, uncontaminated and deserted of all control from Bishops, the curse of curses, and from the subjection of all earthly Kings; the corner stones of this government are already laid, the materials are preparing, and before six years roll about, the great, the noble, the stupendous future will be erected." [1]

Nevertheless, the conservatives steadily gained, and when, on September 4, 1769, Sir Henry died after a short illness, he bequeathed to his successor a council which contained but one Presbyterian, and consequently radical, member, William Smith, Jr. Once again summoned unexpectedly to the chief command of the province, Colden could now feel that the responsibility was divided and that he was not the sole support of the crown. This was fortunate, for he faced a situation of more than ordinary difficulty. In the spring of 1767 Parliament had passed a bill taxing a variety of articles on their importation into the

[1] *The American Whig*, 1769.

colonies, while a year later it was determined that the regulars, sent over partly to protect, partly to coerce, should be subsisted by the towns through which they passed or in which they were posted. Clearly enough, every argument that had been used to prove the tyranny of the Stamp Act applied with equal force to the first of these measures, and there were bold spirits who dreamed straightway of an intercolonial agreement by which not one of the taxable articles should be received in any colony. But New York, though she had her moments of enthusiasm, was something too cosmopolitan, too hard-headed, too balanced, deliberately to sustain them. Whatever her demagogues might say she had not yet made up her mind what to do, and its making depended on many things.

In the first place, Colden soon learned that the last assembly had passed a bill providing for the issue of £120,000 in bills of credit on loan; that it was most popular with every one; that it had been sent over in the spring for the royal judgment; and that a similar measure would be proposed at the coming session. For this reason he delayed calling the members in the hope of hearing from the ministry. But when, having waited as long as possible, he issued the summons and a bill of the expected nature was brought in, he decided, after a careful examination, that it was quite free from objectionable features. It seemed to him bound to increase the importation of British manufactures, and while there was no suspending clause, as the instructions directed there should be, the date fixed for its effectiveness would accomplish the same end. Hence, when he found that there was a strong feeling against suspending clauses, and that this was largely due to the fact that bills with such clauses were so long in emerging from the gloom of the Board of Trade's office, he forebore to urge one and intimated that he would pass the bill as it stood.[1] In doing this he merely followed the

[1] Colden to Hillsborough, Letter Books, II, 187–189.

precedent set by Sir Henry, who had passed the bill despite the late act of Parliament directed against colonial currency, and who had at the same time sent home a strong representation of the need for such an issue. Colden had at least the right to hope that this had had some effect. His concession was followed by the passage of a bill for provisioning the regulars, by which the sum of £1000 was voted from the treasury and £1000 from the proceeds of the new bills. The assembly had not been generous, but Colden in writing home called attention to the fact that, even in England, the quartering of the soldiery was an unpopular measure.[1] Indeed, while he was as little disposed to consider the people the source of power as ever he had been, a certain degree of toleration, of regard for expediency, of conciliation, what you will, was tingeing his letters and speeches.

The revolutionary party, however, thought his policy susceptible of another explanation. The adoption by the house of the famous resolutions of the Virginia House of Burgesses did not blind the watchful Sons of Liberty to their recognition of the quartering act. Two days after the assembly had agreed to pass the provisioning bill, the speaker laid before the house a pamphlet addressed "To the Betrayed Inhabitants of the City and Colony of New York."[2] Having accused the assembly of indifference to the liberties of the people of the continent as well as to the property of the people of New York, its author went on to say that some baleful influence must be at work. Indeed, he affirmed that the guilt and confusion of the supporters of the bill during the debate on its passage proved this. The source of the influence was equally clear. Mr. Colden, realizing that the ministry would expect him to dissolve the assembly if they re-

[1] *Ibid.*, II, 199–202.

[2] The text of this pamphlet is given in the Appendix to the first volume of Jones's History, p. 426.

fused to consider the soldiers, fearing that his children might be deprived of their offices if the ministry were disappointed, yet knowing that a dissolution would mean no salary for him, had flattered the members into thinking that the currency bill would be approved when he knew that there was no possibility of such a thing. The Delanceys, now once more in the ascendant, were equally opposed to a dissolution; and for this reason, notwithstanding past bitternesses, had joined hands with Colden. Finally, the new coalition had been helped by the wishes of the assemblymen themselves, who naturally desired to stay where they were and not risk an election. But the bill had been passed by a majority of but one. There was therefore still hope that New York would not be disgraced in the eyes of Boston and Charlestown. Let every reading patriot, urged the pamphlet, meet in the Fields on a certain day and thence go in a body to their respective representatives. These were to be ordered to join the minority, and if they refused, a committee was to be appointed to correspond with the colonies, with friends of the cause in England, and with the public prints.

This paper was voted, Colonel Schuyler alone dissenting, to be "a false, seditious and infamous libel," while it was unanimously decided that it was an anarchistic reflection on the dignity of the assembly, and that the lieutenant-governor should be humbly addressed to offer £100 for the discovery of its sponsors. But its sentiments were not unique. It had scarcely been disposed of when another paper signed "Legion," and calling another meeting in the Fields, "to avert the disastrous consequences of the late base and inglorious conduct of the General Assembly," was presented by Captain Delancey and voted "an infamous libel," while the author was declared guilty of high misdemeanour and £50 was offered for his discovery. Moreover, when it had been found out who it was that had endeavoured to arouse his countrymen to their danger,

the results of his prosecution were on the whole satisfactory. It seemed that he was a certain Alexander McDougal,[1] the son of a Scotch milkman, who had started his career by making the daily rounds with his father's cans. Later, his father and others having broken with the Presbyterian meeting and set up one of their own, he had acted as clerk while his father was pastor. Later still, he made several voyages before the mast, became the master first of a small ship and then of a privateer, and finally married a St. Croix lady of some wealth and set himself up in trade in New York. Despite his comfortable circumstances, however, when he was arrested on Horsmanden's warrant, he refused to give bail and at once became the idol of the town. He was called a second Wilkes; and borrowing an incident from his prototype, the papers made the most of the already overworked number forty-five. It was said that forty-five gentlemen had dined with him, forty-five ladies breakfasted with him, forty-five tradesmen supped with him, forty-five women taken tea with him. He was said to have received forty-five pounds of beef from Thomas Smith, forty-five bottles of Madeira from Peter R. Livingston, forty-five bottles of ale from Scotch traders, forty-five pounds of candles from the two Presbyterian parsons, and so on. Finally, the repetition growing tiresome, ninety-three, the number of members of the Massachusetts General Court who had refused to rescind a vote on Lord Hillsborough's order, was substituted, and the tale was told over once more with renewed zest.

Meanwhile, everything had been done to induce the sheriff to pack the coming grand jury.[2] But he was proof against both bribes and threats and selected twelve men highly satisfactory to the conservatives. Then an attempt was made to forestall the presentation of the libel. William Smith offered the lieuten-

[1] Jones's "History of New York," etc., I, 24–28. [2] *Ibid.*, I, 28–32.

ant-governor's account of his conduct long since disposed of; John Morin Scott, another old pamphlet; Isaac Sears, a budget of old newspapers; and William Livingston, the "History of the Military operations in the province of New York," published in 1758, and of which he himself was later discovered to be the author. The jury would have none of them, but when the pamphlet was at length presented, they found a bill and McDougal was indicted. However, before his trial came on, the journeyman printer, who had acted as informer, was hounded first out of town and then out of America, while his master, James Parker, was found dead in his bed one morning, not without suspicions of foul play. Thus left without witnesses, the prosecution was obliged to slacken its efforts and McDougal obtained his discharge. But he had been clearly disapproved by the best element in the province and Colden felt satisfied.

Indeed, the fact that nearly every one now thought that Great Britain was in the wrong and must be shown her mistake inspired a disposition to the concession of immaterial points in all but the most radical. New York seemed hanging in the balance. The pamphlet just considered and others like it were to be seen at every street corner; the Sons of Liberty held frequent popular meetings; there was much bad feeling between the people and the soldiers, which had resulted in several skirmishes; while a dangerous encounter had only been prevented by the united force of the lieutenant-governor, the magistrates, and the most public-spirited inhabitants. On the other hand, Colden had been extremely gratified by a notable attendance on the usual New Year's Day reception at the governor's mansion; he had evidence that the meetings were not in reality as well attended as it was desired; he knew that when Massachusetts had proposed that New York join in an agreement to import no British goods until Parliament should remove all the duties

it had laid, the proposition had found no seconder at the meeting of the Sons, where it was presented.

Influenced, therefore, by a desire to turn the undecided state of the community in the right direction, Colden signed all bills presented him, their number including an apparently conservative proposition to debar judges from the assembly. On the whole he was pleased with the results of his administration, and he only regretted that the end was probably near. For, though he had intimated that its prolongation would be considered a reward for his past services, Lord Dunmore had been appointed his successor almost on the news of Sir Henry's death. But his lordship apparently was in no hurry, and meanwhile Colden was horrified to hear that his Majesty disapproved his passage of the paper money bill, which was disallowed, and of the bill excluding judges from the assembly as well. When his Majesty was considering one money bill, it seemed, his representative had no right to pass another of a like character. The appositeness of Colden's reply that that was the very reason he had done so was probably lost on his superiors. Wherein lay the difficulty of the other bill, Colden could not imagine. No judge was allowed to sit in the Commons; the assembly had already tried to keep Judge Livingston from his seat; it was against all constitutional theory that judiciary and legislature should be combined. How could any one have dreamed that the passage of such a bill could injure prerogative? [1]

But the government had spoken. The provision for quartering the soldiers was nullified, the people were antagonized, a devoted old servant feared to meet his death under the shadow of official disapproval.[2] Surely, whatever may have been the actual causes of the American Revolution, such a clumsy system of legislation as this could not have endured long in any case. For a government to treat the legislation of an important colony

[1] Colden Letter Books, II, 216–219.

[2] *Ibid.*, II, 221–224.

like casual letters, to be answered when inclination served, sometimes at once, sometimes not for weeks or even months, and when it did take a bill into consideration absolutely to disregard at a critical moment the judgment of one who had never erred by concessions to the people, was maladministration worse confounded and sure to meet its deserts.

But, though Colden said all he could, the disqualifying bill was also disallowed, while he likewise fell under condemnation because he had encouraged an intercolonial meet for discussing Indian trade regulations, a subject which had interested him so long. The English government a few months earlier had decided to put Indian affairs in the hands of the colonial legislatures, and before Moore's death the New York legislature had decided to leave the matter of Indian trade to Albany. This Colden had considered bad policy, as it meant that the traders, always a shifty set, were to be allowed to regulate themselves. When, therefore, the assembly now suggested a meeting of commissioners at New York instead, Colden, though it will be remembered that he had denounced the Stamp Act as illegal, warmly seconded the proposition and himself wrote to the various governments. As a matter of fact the meeting, owing to various difficulties, never took place, but the delegates from Virginia, one of whom was the celebrated Patrick Henry, actually arrived and were advised by Colden to make the best of the situation, and consulting with the New York delegates, to formulate certain rules which might prove satisfactory to the remaining colonies.

It is interesting to note that his approval was denounced by the government for the same reason that Colden had denounced the Stamp Act Congress, namely, because it would tend to encourage a union of the colonies for mutual benefit. Circumstances were undoubtedly broadening Colden's singularly vigorous intellect as he studied the conflicting forces which still

held the balance nearly true. The Sons of Liberty still discussed melodramatic possibilities; the newspapers still made their appeal to a wider audience; and a committee of merchants went down to Philadelphia to discuss the still undecided question, to import or not to import. Parliament had rescinded the duties on very article except tea, and the Philadelphians had at first proposed to import everything with the same exception; but a gentleman answering to the description of Franklin influenced them to decide to import nothing until Parliament had rescinded all duties, and the New York gentlemen returned as doubtful as they had left. Still a census taken of the merchandizing inhabitants returned 1180 willing to import as against 300 unwilling, and at the same time Colden's patriotic soul was gladdened by the culminating incident of the Stamp Act controversy. In their enthusiasm over its repeal, New York had ordered an equestrian gilt statue of George III. It had duly arrived, and one August day in 1770 it was unveiled on its pedestal in Bowling Green in the presence of councillors, assemblymen, magistrates, clergy, and inhabitants generally. A band played on the ramparts, thirty-two pieces of cannon were discharged, the crowd drank health and long life to George III, and then, while the spectators shouted themselves hoarse, the general of the army, his officers, and men marched from the fort and around the statue. Just before the arrival of Lord Dunmore, moreover, the election of city officials was a decisive victory for the government party, and Colden's last letter happily recorded that the councillors and, with one exception, the city members of the assembly had opposed non-importation.[1]

## VIII

At last Lord Dunmore arrived and Colden retired to Spring Hill with considerably more distinction than when he had given

[1] Colden Letter Books, II, 229.

way to Moore. Before he left, fifty-six of the principal merchants in town presented their thanks in a body, as did also the ministers, churchwardens, vestry, and many members of the established church, while he was told that other addresses were only prevented by his hasty departure.

Eighty-two years of age, fifty of which had been spent in the service of the crown; it would have seemed that Colden had fought his last fight and that his closing years would be honoured by the king. Yet he had scarcely reached Flushing when he received a letter from Hillsborough through Lord Dunmore's private secretary, Captain Foy, in which his lordship said that it was the royal pleasure that a moiety of the perquisites and emoluments of government received between the date of Dunmore's commission and his arrival should be accounted for and paid to Dunmore.[1] Colden was aghast. The only similar demand in all his long experience had been made by Colonel Cosby on Rip Van Dam, and though Cosby had been armed with a similar order and had brought suit to recover, he had failed to get a penny. Surely, after forty years, an order then considered indefensible was not to be revived in his despite! Something of this he managed to say to Captain Foy, who only looked calmly neutral and asked for an answer to his lordship. Colden said he would give one in person in the morning. But all attempts to draw Dunmore into discussion failed. He would only say that the king had a right to do as he had, and that he himself considered it his duty to prosecute. Thus frankly met, Colden wrote to Hillsborough; but even while he was writing, he heard that suit was entered against him by Lord Dunmore in the Court of Chancery in the name of the king. This meant that whatever the result, it would not cost Dunmore a penny; while it meant also that the result was assured beforehand, for Dunmore himself was chancellor. Colden had, according to

[1] Colden Letter Books, II, 230–329.

his own statement, made excellent financial use of his last administration, and the thought that he had been working for a stranger was distressing enough; but he was more disturbed at the thought of meeting such a mark of royal approval at the very end of his career. Yet while he thought it unjust and had no intention of submission, Dunmore was the object of his resentment rather than the government, whose thoughtless indifference even to his rights seems never to have angered him.

Engaging counsel and agents in England, as well as an attorney in New York, he began to prepare his case. The king's demand was based on an order of William III, issued in 1698, and stating that in case of the death or absence of the governor-in-chief, the acting executive should receive half of the governor's salary, perquisites, and emoluments; that the governor-in-chief, appointed or to be appointed, should lay no claim to this moiety before he reached America or during any absence therefrom, and that his Majesty reserve to himself the other half of the said salary accruing between the date of the governor's commission and his arrival. This declaration, the chancery bill maintained, had been incorporated by the instructions ever since, and therefore Colden, from the time of Moore's death on, was entitled to but half of his receipts, the king being entitled to the other half from the time of Lord Dunmore's commission. Who was entitled to it for the few months not mentioned remained untold, and with equal inconsequence it was announced as the purpose of the bill that Colden should account for all his receipts from the date of Dunmore's commission, January 2, 1770, to his arrival on October 18th, and resign one-half of them.

Colden, as he wrote to his New York counsel, would gladly have answered this on its merits, secure in the fact that his salary had been granted him personally, and that perquisites,

being voluntary contributions for services done, belong to the person who does the service. Therefore his perquisites were his private property, and not in the disposition of the king. But the nature of the case obliged him to plead and demur to the court itself. His counsel, James Duane, thought this line of defence bad policy, owing to Colden's unfortunate circumstances, and though Colden begged at least to be allowed to ask his lordship on his honour if he were not an interested party, the demurrer was free from personal features.

The king's demand was so unjust, the premises on which it was founded so absurd, that it had been easy to find nearly a dozen reasons why it was without any justification whatever. In the first place, the declaration, which was in itself but a temporary order of King William's, had never been incorporated in the instructions. According to these, in case of a governor's absence, his representative was to share his emoluments, but nothing had ever been said about them in case of his death, or about the right of the king to any part of them. Custom had interpreted this to mean that as a matter of course the surviving partner, as it were, should take all. Again, the bill required an account of all receipts between the death of Sir Henry and the arrival of Dunmore, whereas it claimed for his Majesty a moiety of such only as had accrued since the date of the latter's commission, while the declaration of King William reserved half of the salary alone. The defendant also pointed out that by the bill the king authorized no one to sue for his moiety or to receipt for the same, and that without any authenticated copy of the declaration it was impossible to know whether it was given correctly. If it was, conditions had changed so as to make it no longer practicable. In 1698 the revenue of the province was granted to the king in a lump sum, and he could do with it as he wished. At this period each salary was granted by name, and the king's only connection therewith was through

the warrants of the governor. In conclusion, the defendant requested further proof of his obligations than an unauthenticated copy of a letter from Lord Hillsborough, while he also asked whether, if authentic, it was a legal grant or disposal by his Majesty of his interest in the salary or a legal appointment of Dunmore as his trustee, and if either, whether the proper court had been selected for its recovery. At all events, he prayed the dismissal of the suit with reasonable costs.

Permission was given to argue in support of this demurrer on December 3d, from which date, owing to the death of Mr. Duane's eldest son, the hearing was postponed until the 10th. On that day, according to Dunmore's proposition, the court was to sit in the City Hall. But at the last moment he changed its location to his own house, where, despite this change and an hour's delay due to a belated conference between the governor and his counsel, William Smith, a large number of townspeople heard Mr. Duane's argument. Duane's plea was long and satisfactory. It could not very well have been otherwise, for he was skilful and the facts were on his side. On the 7th of February, Smith replied for the king and was answered by Duane so pithily that every one who heard him pronounced him victorious at every point, though no one dreamed of his ultimate success. One of his lines of reasoning was this: The king could do no wrong. No one living knew exactly what William meant when he gave his verbal order seventy years before, nor to what extent that order had been prompted by the king's ministers. The king, therefore, had no justification for preempting the property of a subject, and it happened that the salary in question had been granted to Lieutenant-Governor Colden direct, and was not his merely by inheritance from Moore.

Dunmore was as thick-headed a Briton as ever lived, but he disliked being called unfair, and he knew such a charge to be probable, as he had every intention of giving a verdict in favour

of himself. Accordingly, merely to strengthen his cause, he decided to ask the justices of the Supreme Court for their opinion. These, however, declared the defendant's points well taken. Dunmore, discomfited and amazed, must have rejoiced that the offer of the government of Virginia provided him a possible way of escape from a situation that might become disagreeable. His interest thus comfortably divided, he despatched the papers home with the result that the case was dropped as suddenly as it had been opened. Indeed, Hillsborough actually asked Colden why he had not told him his wishes concerning his salary! It was but another instance of how they managed things then.

Not unnaturally Dunmore decided to go to Virginia, but he was succeeded directly by William Tryon, and it was not until April, 1774, when Tryon returned home on leave of absence, that the responsibility of government again came to Colden. By that time forces and influences were swirling from colony to colony, that no power, probably, could have stopped. By that time New York, like the rest of the colonies, had a revolutionary committee, and was watching as keenly as they for every pound of tea that might find its way to her ports. A long-expected ship, with a large consignment from India, arrived at the Hook shortly after Tryon's departure, and here its captain heard news that caused him indefinitely to postpone his trip up the Narrows; a small sloop with Dutch tea and other commodities on board was seized quietly at noon by a custom house officer, who thus forestalled the people; and the cargo of a third ship was destroyed by a mob whose rage was pointed by the fact that its captain had been the first to refuse to receive any tea on board his vessel, and had therefore received public thanks the preceding autumn. Now a parade celebrated his enforced departure from town. Yet even at this eleventh hour, when one might have thought the English government too busy with its

opponents not to need all its friends, Colden received word that Mr. Banyer, for long years the clerk of the council and a public official of the utmost tact, skill, and loyalty, was dismissed; there were intimations that, possibly on account of age, he himself was to be replaced even as lieutenant-governor; while in his efforts to unravel the tangle of grants near the New Hampshire line he was constantly baffled by the demands made for government placemen, or by advice from English officials who knew nothing about the situation. It was even said, apparently on authority, that those who had preëmpted grants were receiving encouragement from the ministry, and Secretary Pownall lent colour to this report by suggesting that the matter be settled by commissioners from either province. But Colden, who considered that New York had never overstepped her rights, while New Hampshire had been regardless of even a sense of decency in her encroachments, promptly refused to consider such an apparent recognition of her good faith.[1]

About this time arrived that attempt to repress the irrepressible, known as the Boston Port Act, and in an astonishingly short time an account of it was in every American newspaper and its discussion on every American tongue. An invitation was issued to all voters in New York City to meet at the Exchange, to elect a committee of correspondence, and there many of its most valuable citizens were seen for the first time at a meeting called for forming plans of organized resistance to the policies of George III and his ministers. That their policy was ill-considered and unendurable these conservative burghers had felt as keenly as the political demagogues who had so long been prominent in opposition. At the same time they had so little sympathy with mere agitation, their point of view was so different from that of a typical Son of Liberty, that they had stayed away until a sense of duty and a hope that they might prevent

[1] Colden Letter Books, II, 342.

imprudent measures drew them from their comfortable neutrality.

The result was satisfactory. The existing committee was dissolved, and a committee of fifty-one, representing the best elements in town, was elected in their place; Scott, McDougal, and Sears being among those discredited. There were, of course, radical members in the new committee, but, as was soon evident, the conservatives had the upper hand. The Boston letters urging a refusal to import until the Port Act was repealed received a discouraging reply; Philadelphia's request for a day of fasting and prayer was likewise evaded; while the extreme measures proposed by the radical members were uniformly disapproved. Colden, it is true, was somewhat disappointed when the committee wrote to all the counties asking the appointment of committees of correspondence, and when they so easily decided to do all they could to make the forthcoming Continental Congress, to be held at Philadelphia, a success. On the other hand, he was reassured by the good judgment of the committee, as shown in the selection of delegates. The majority of the five named were men whose opinions and character assured the Loyalists that they would be a bulwark for all they held dear, and all classes joined in their election. There seemed ground for the hope of a firm union with England on constitutional principles. "If the delegates pursue only prudent and conciliating measures," Colden wrote, "the meeting, though illegal, may do good." There were, he added, all through the province people whose greatest wish was harmony, and who were assured that, could it be thought consistent with the wisdom of Parliament to lay aside the right of taxation, the assemblies, instead, granting to the crown a sufficient and permanent support of government, this might be attained and the dependence of the colonies be assured.[1]

[1] Colden Letter Books, II, 342.

Colden's growing sense of tolerance was due in no sense to failing powers. For many years republican sentiment in New York had been a matter of party, of faction; and Colden felt it was so still. He was convinced that the next general election was a cause of more anxiety to many politicians than the decision of Parliament on the Port Act; he was urging the encouragement of King's College as a seminary for the propagation of loyalty, as Yale and Princeton were of sedition; but when he saw men whom he could trust take up the problem of the relations between England and America, he was not restrained by narrow prejudice from wishing them well, even though they were associated with those he so disapproved.

But while he looked to the Congress in hope, his attention was demanded by more insistent matters. In the county of Charlotte were the holdings which, granted originally and with little justification by the governor of New Hampshire, had been declared out of his jurisdiction by the order in council making the Connecticut River the eastern boundary of New York. Indeed, a great part of the land had been granted by New York under the proclamation of 1763. But, though New Hampshire's governor no longer assumed jurisdiction west of the Connecticut, the holders of the spurious patents refused to consider themselves under the laws of New York, and threatened all those who did so, as well as the magistrates themselves. Finally, they had gone the length of erecting a two-story blockhouse at Otter Creek and another on the Onion River, from which strongholds they defied the officers of the law. Indeed, they set up officers and courts of their own and assumed an attitude so menacing that the sober-minded inhabitants and the magistrates appealed to the governor and council. The council unanimously advised that a military force be sent up for the reduction of the miscreants, and Colden wrote to Gage asking his coöperation. It was an excellent opportunity, he urged, to

show how necessary the regulars could be. But Gage refused, because some other general had refused a like request, and the government had approved his refusal.

The winter setting in at this point, the Charlotte County revolution became for a time a foreign episode. But early in the spring of 1775 came news that the Bennington rioters, as the malcontents were called, had seized the justice of the peace, tried him, and sentenced him to two hundred lashes and ultimate banishment. The excitement, moreover, had spread to Cumberland County, south of Charlotte, and adjoining both New Hampshire and Massachusetts. Here the rioters, having taken possession of the court-house just before term time, a scrimmage followed, and the sheriff and his assistants making use of their guns, one rioter was killed and several wounded. In consequence the court-house was abandoned and the courts were opened. But the next day reënforcements for the outlaws arriving from Massachusetts, they took the judge, the sheriff, the clerk of the court, and several others prisoners, putting them in the county jail, whence they were transferred to that of Northampton, Massachusetts.

As in Charlotte, the rioters were supposed to be fighting for their homesteads, but there was a strong political element in their purposes. The government messenger, who had been sent up from New York for exact information, returned saying that if he had crossed the border of the county he would have been surely put to death; while the representatives of the county in the assembly, who had there voted with the conservatives, were warned by their families on no account to dare venture home. Colden insisted also that the New Hampshire patentees, as well as those of New York, were living in undisturbed possession of their titles, and that if the debts of the fighters were paid there would not be a sixpence left among them. Colden, moreover, laid the assembly's refusal to give him more

than £1000 for the restoration of order to the influence of the extreme Whigs, who found willing hearers in the close-fisted country members. A thousand pounds would not go far toward the suppression of the insurrection, and Gage was appealed to again, when, after considerable delay, he sent some arms and ammunition to Colden for the use of the well-disposed Cumberlanders. But he was too late. The battle of Lexington had been fought, the whole country was slowly realizing that it was in a state of war, and the little rebellion was soon lost in the Revolution.

Meanwhile, Colden had been watching New York with eager interest as she tried to solve her problems. Notwithstanding the high hopes of the loyalists, their counsels had not prevailed at the Philadelphia congress. That body had found a set of resolutions which had emanated from Suffolk County, Massachusetts, and which practically declared war against Great Britain, unless she mended her ways right speedily, more to its taste than halfway measures. For instance, the elaborate plan for a constitutional union offered by Mr. Duane of New York and Mr. Galloway, the Philadelphia loyalist, though debated, was not even entered on the minutes. But these resolves had to do with the future. It was the non-importation agreement of the congress with which the colonies must deal at once. Most of them, it was certain, would support it; but no one knew what the great province of New York would decide to do, and the odds seemed fairly even as the coming of the assembly was breathlessly awaited. The congressional delegates had, after all, not been fairly representative. Several counties had refused to participate, either by the election of delegates or the adoption of resolutions, and others had done so but feebly. In Queens, Colden's summer home, not six persons had appeared at the meeting called for the purpose, while a gentleman who had been present told Colden that the election in Orange had

been left to less than twenty among three thousand freeholders. New York, moreover, was publishing more pro-administration pamphlets than all the other colonies put together, while the Whig propaganda, which Colden feared most, consisted in the publication of reprints of English speeches, both in and out of Parliament. Colden was also encouraged by another circumstance. It being known that certain New York merchants had received orders for supplying the army at Boston, a public meeting was called, and, though the attendance was neither large nor of good quality, it was voted to send a committee to urge the merchants to provide neither the army nor the transports. This interference was much resented, and not alone by the merchants; the committee of fifty-one in turn calling a public meeting, at which it was declared that the action of the previous gathering had been without public authority.

This, to be sure, happened before the news of the action of Congress had been received, the arrival of which, about the 2d of November, resulted immediately in the dissolution of the committee of fifty-one, and the choice of another to execute the new measures. As usual, the people were summoned by handbills; but for some reason only thirty or forty attended, and the committee of sixty nominated by their predecessors was promptly chosen. Among these Colden was surprised to see the names of several well-known conservatives, but he soon found that they had accepted a nomination merely in the hope of preventing the uncurbed leadership of the radicals. "The spirit of mobbing" was abroad, and it was easy at any time for a few people to collect a crowd ready to do anything that they were told.

Almost immediately also it became evident that New York was going to subscribe to the non-importation agreement, the only difficulty seeming to be the proper status of the smuggler, who was pursuing his chosen occupation as merrily as ever.

This contraband trade was largely with the Dutch, and vessels from Holland and St. Eustatius in large numbers still anchored in the lower part of the numerous bays and creeks in the vicinity of New York. Thence they would send their goods to the town in the small boats always to be hired. Sometimes these were seized and sold at auction, but at a price so low that their owners could easily buy them back; and Colden thought that if all the boats thus taken and not bringing a certain price were destroyed, their owners would be less willing to serve the merchants. But what he chiefly wanted was two or three coasting vessels. The Custom House did not own a single boat, and its work was consequently greatly handicapped. Colden's grandson, however, who had lately been made surveyor and searcher, had succeeded in seizing several vessels, and had been so diligent that he had been given to understand that a little negligence would be worth £1500 a year to him. It therefore seemed to Colden that if the government, after hiring the desired vessels, promised the officers and men a percentage of their seizures besides their pay, the merchants could scarcely afford to go higher. But the question with the patriots was, whether the smugglers should be considered importers. For example, no tea was to be landed after December 1st; yet the smugglers were expecting large quantities of Dutch tea, and insisted that it should be exempt. Others said the fair traders should not be the only sufferers, and the whole subject was debated with an openness shocking to Colden.

It was now also necessary for the lieutenant-governor, according to the royal orders, to see that no arms or ammunition were admitted into the colony unless under government license. Shortly after these commands arrived, the collector discovered ten chests of arms, three boxes of lead, and one barrel of powder on a vessel bound for Rhode Island, all of which had lately been shipped from London as hardware. Attempts were made to

bully Mr. Elliott into letting it alone, but, supported by Colden, he held firm, and the principal townsmen and merchants waited on him in a body to testify their approval. Still, when the assembly was at last on the point of meeting, Colden could only say that a good majority of the most respectable were yet for harmony. But the colonies around them were electing provincial congresses, and Colden endeavoured to prepare the Secretary of State for the worst, by reminding him that "enthusiasm is very contagious and when backed by art irresistible."

The assembly, summoned for January 10, 1775, did not make a quorum until January 13th, and two days after they tendered an address highly satisfactory to Colden, for while deploring the government's policy and insisting on the necessity of a change, it was full of loyalty to the absent governor, Great Britain, and the king. Twelve members still being absent, the house voted to defer the consideration of the proceedings of Congress until February 5th. However, on January 29th, a few more Whigs having straggled in, it was moved to take those proceedings into consideration, and, after a hot debate, the motion was defeated by a vote of eleven to ten. Two weeks later a motion to return the thanks of the house to the congressional delegates was defeated by a vote of sixteen to nine, and still later another motion to take the sense of the house in regard to the appointment of delegates to the next Continental Congress, to be held in May, was defeated seventeen to nine.[1] When it is remembered that every other assembly that had met since the closing of Congress had approved its measures, it must be conceded at least that the assembly of New York had the courage of its convictions. They next approved the work of the committee which, having reported according to order on the grievances of the colonies, had been ordered to make a humble, firm,

[1] Jones's "History of New York," I, 36.

dutiful, and loyal petition to the throne, a memorial to the Lords, and a representation and remonstrance to the Commons of Great Britain, in all of which Colden witnessed that there was not an immoderate or disrespectful line. Then, Colden having adjourned them until June, "Lord Livingston," Colonel Schuyler, and others of the more radical members hurried off to secure the popular election of delegates that the assembly had refused.

Meanwhile, a ship arriving from Glasgow, though allowed to enter the dock, was at once carried off to the watering-place, where a sloop with armed men on board stood guard to prevent her coming up to the town. With the advice of the council, Colden ordered Captain Montague, of his Majesty's sloop *Kingfisher*, then in the harbour, to see that no damage was done the ship, and to give his master any assistance he might ask. But, much to the spirited old man's disgust, the captain was "a stupid body," who would neither make a complaint nor ask assistance, and the consignees were irresolute enough to see their goods sail off without demanding them. The government, therefore, could interfere to no good purpose. Another ship from Jamaica received like treatment, and Colden found no other explanation for conduct at such variance with the assembly's action than the remembrance of the repeal of the Stamp Act. Violent proceedings had forced one repeal, why should they not again have that effect?

But, notwithstanding her agreement in practical policy with the other colonies, New York was very unpopular, and the object of many threats from her more ardent neighbours. The Southern colonies, for instance, sent word that they were going to Massachusetts by way of New York, and though Colden judged this to be mere bravado, he thought the hundred privates left after the departure of the army for Boston a small garrison for such an important town, and suggested that a

large sloop be sent to guard the harbour. From his point of view, he was right. Not the least of the terrors before the province that had dared be unique was the prospect of losing all debts due from the other colonies. Naturally, those who disapproved of the assembly's policy anyway were rendered still more disgusted by the prospect of having to suffer the consequences. The city was soon in a whirl of riots. The idea of the colonists fighting the king's troops was so mad, Colden was still convinced, that it could scarcely be taken seriously; yet that was no reason for improper neglect, and every day now offered him additional proofs that the irresolute magistrates and the hundred privates were no match for the rioters.

Some time before, the New York City loyalists had publicly declared against any further coöperation with the Continental Congress, but when it was announced that a meeting for the election of deputies would be held at the Exchange on a certain day, they resolved to take part. Accordingly, they met in the Fields and proceeded to the meeting-place in a body. Thither the opposition had also marched through the town, drums beating, flags flying, trumpets sounding, until by force of these attractions they concluded their parade with a mob at their heels. Then, the leaders having drawn to one side, announcement was made first of the nomination of the delegates and almost at once of the election of the nominees; and when the loyalists demanded representation, there was a show of bludgeons and other weapons, if not their application, and the protestants were obliged to cease their protestations.

To the people thus halting between two courses came the news of the skirmish at Lexington. A popular meeting was called, the committee took charge of the city, the Custom House was temporarily closed, the post route between New York and Boston was given up, independent companies drilled daily, and an association was formed by which New York solemnly united

with her sister colonies against the authority of Parliament. Colonel Morris, Mr. Watts, Mr. Wilkins, Colonel Maunsell, and others hastily made ready for England to see what they could do to bridge the crisis, and Colden, seeing Congress and committee in complete control, and obliged to remain a spectator only, left for Flushing. Thence he directed the departure of the scanty garrison for Boston on the ship which had arrived too late to be of any real use; there he received and answered the address of the New York committee, the committee telling him that all measures for redress had failed and he attempting a final defence of king and Parliament; thence, again, he told the ministry how apparent it had been to him that a little care and foresight could have saved New York at least; thence also for more than a year he watched the contest with unflagging interest. But the embattled farmers had put an essential end to the British government of the colonies, its efficiency had ceased on the 19th of April, 1775, and on that date also Colden had ceased in any real sense to be a colonial executive.

His long official career was over, and it is, therefore, now possible to do that for which his contemporaries had neither the time nor the inclination and, considering his political activity as a whole, to take stock of its accomplishments, to try to discover whether, from England's standpoint, its influence was harmful or the reverse. For fifty-five years he had represented and served her in one of her most important provinces, and remembering his varied tastes and interests, his friends and his ancestry, it would seem scarcely possible that he had not helped to enhance her prestige and develop her resources. Of excellent Scotch stock, the simple but sturdy ambition characteristic of his family had until his day found ample satisfaction in a clerical or mercantile career and in the possession of the respect of the county families. But Colden had looked farther afield, and by sheer force of a never-flagging industry and an unconquerable

determination to make the most of every faculty he had achieved much. Beginning life as a poor country boy in an uninspiring Scotch parish, he could have said at its close that he had been a merchant; a physician who had succeeded in adding something to the total of medical knowledge; a learned botanist; an absorbed, if somewhat unsuccessful, investigator in almost all the known sciences, in astronomy, in physics, in chemistry, and in what we now call psychology; a student of sanitation far in advance of his day; an educator to whom the interests of education were a passion; an acceptable historian; the chief administrator of the lands of one of the largest British provinces for nearly half a century; and, finally, for many years its leading official. Thus, though not a man of genius, nor even perhaps of great talent, Colden had been saved from becoming a mere *dilettante* by a sense of public duty, which with him had always been stronger than inclination, while at the same time his passion for discovery and experiment had taught him the humility of the true scientist however tenacious he might be of the ultimate success of some of his theories. When it is added to all this that he had many excellent social qualities, that he had the ability to keep, as well as make, friends, that he was a thoughtful as well as an affectionate father, it would seem that, provided he had the ability, his success as an official was assured. But unfortunately the moment his mind touched on politics, where within certain limits he was more at home, more original, and more skilful than in any other phase of activity, his sympathy, his plasticity, his humanity even, dropped from him and he became a martinet, an intolerant theorist, an implacable stickler for the letter of the law, while tact and common sense became qualities to him unknown. From his standpoint, the freeborn colonists about him, many of them of foreign blood, and many more without even a childish memory of English traditions of rank and class, were to be dealt with not as thinking human

beings, but rather as mere animated puppets who persisted in making irritating use of their animation. If they rebelled at the word of command, force must be applied. It was absurd that they should presume even to argue, and that they should have any consideration was preposterous.

Under these circumstances, it is not to be wondered at that his large and sane views of territorial expansion, of humanity to the native population, of systematic development, were quite lost sight of. Few there were in the province who could have appreciated statesmanship in any case; fewer still could have perceived it in such untoward surroundings. In justice to Colden, however, it must be remembered that his theories were in the main right, that he wanted nothing of any one that he was unwilling to give himself, and that this was little more than an Englishman's unquestioning loyalty and instinctive obedience. The difficulty was that he never gave himself the trouble to understand, and apparently no one ever suggested to him, that England's New York subjects, with their varying antecedents, must be appealed to and not coerced. There is no doubt that these subjects were as stubborn and narrow in their independence as Colden was in his conservatism, while their leaders were often unscrupulous men without even the grace of strong convictions. Still if in extreme old age the rousing events of November, 1765, changed Colden's outlook to a marked extent, some salutary advice from his venerated superiors, perhaps, would have availed much in his comparative youth. The truth is that if a rigid devotion to form and an unrestrained expression of a critical opinion made Colden detested and probably reacted on the country he represented, any injury he may have worked her unwittingly was her own fault. That England in any real sense of the word governed America during the years of Colden's career is undoubtedly not true. Up to the time of Walpole's fall, indeed, the avowed intention of the British government

was to let the colonies work out their own problems and, whether that was a sensible proceeding in a government that expected sometime to assert itself or not, it was at least a consistently maintained course of action. But from Walpole's time on, the colonies suffered from a policy of alternate neglect and attention that seemed at times to be dictated by a very demon of malice. During all that time, New York, at least, had probably but one man at once interested enough, well-informed enough, and determined enough to be able and willing to tell the whole truth about her to the home government. And what was the result? Nearly always literally in the right, Colden repeatedly endeavoured to prove this to a set of ministers, who, with few exceptions, were not even mildly interested in the distant colony. In consequence, they were bored to distraction. But instead of telling him so, they, with extraordinary perverseness, would leave him in suspense for months, and then perhaps give some mark of their approval to the very man or men he had been trying to picture as subverting the government. Advised by English friends that their great men rarely referred to back papers, he had then nothing to do but go over the whole case and make himself still more wearisome. Meanwhile, every one in the province understood that he was unapproved, and he knew that they understood it. Yet even when his firm prejudices relaxed in favour of some colonial demand, the ministry were no more ready to take his advice than if he had been the veriest demagogue. His suggestions and his advice ignored, himself discredited in the eyes of every intelligent person in the colonies, he was yet left until the end in a position where at any moment he might be obliged to command the colony, as indeed he did do over and over again.

But whether he was in first or second place made no difference. The government was completely out of touch with provincial affairs, and, notwithstanding its annual catechism of its gov-

ernors, desired nothing more than to remain so. Such a strenuous, eager person as Colden was distinctly annoying, but even to tell him so was too much trouble, and it was far easier to let him make his suggestions and pay no attention. As he had more than once proved of direct practical assistance to the government, and the government had apparently appreciated his services, there seems to be no other answer to the question why there was no attempt whatever made to come to some understanding with such a faithful, if bigoted, servant, whose devotion promised an easy response. Such astonishing and long-continued negligence, such indifference, varied, as it was, by arbitrary and spasmodic interference, could not long have continued in any case even had George III been but a repetition of his father, even had he had stronger and better advisers. A system that was one vast difference of opinion was becoming too irritating for endurance, and some fixed understanding as to functions and obligations must have been reached; some constitutional forms must have been universally accepted even had there been no appeal to force. Perhaps, if Colden's reactionary advice had been early taken, the necessity for this in one province might have brought about a demand for it in all, and New York might have led the way to constitutional reform. It is even conceivable that his schemes might have been passively accepted if supported with sufficient strength, and then New York might have set the example of a colony developing naturally with the coöperation of the home government. But Colden's advice was not taken in sufficient quantities to prove its quality, and while he cannot be said to have been a force for harmony, his executive career was so circumscribed, he was so deprived of the wholesome friction of argument with equal and superior authorities whose good faith and loyalty he could trust, that of whatever else he may be accused, he cannot be said accurately to have taken an essential part in the precipitation of

the great disagreement. But it can be said that what he might have done in the interests of peace was left undone, and that, whether his own fault or that of others, what might have been a career of great political usefulness is interesting chiefly for what it failed to accomplish.

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